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THE  
GENERAL RULES, AND ORDERS,  
OF THE  
COURTS OF LAW, AND EQUITY  
OF  
THE PROVINCE OF ONTARIO.

PASSED  
PRIOR TO THE ONTARIO JUDICATURE ACT, 1881,  
AND NOW IN FORCE,

WITH  
AN APPENDIX  
CONTAINING, THE RULES OF THE SUPREME COURT OF ONTARIO,  
PASSED SINCE 21st AUGUST, 1881,  
AND THE  
TARIFFS, OF THE HIGH COURT OF JUSTICE, AND THE COUNTY COURTS

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WITH NOTES  
BY  
GEORGE SMITH HOLMESTED,  
(Registrar of the Chancery Division, H. C. J.)

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VOL. II.  
COMMON LAW RULES,  
CONTROVERTED ELECTION RULES,  
GENERAL ORDERS OF COURT OF APPEAL,  
RULES OF PRIVY COUNCIL,  
APPENDIX.

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TORONTO :  
ROWSELL & HUTCHISON.

1885.

U. W. O. LAW



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ENTERED according to the Act of the Parliament of Canada, in the year of our  
Lord one thousand eight hundred and eighty-five by GEORGE SMITH  
HOLMESTED, in the Office of the Minister of Agriculture.

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## PREFACE.

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THIS volume will be found to embrace such of the former Common Law Rules of Practice, and Pleading, as are still in force ; also the *Rules* relating to Controverted Elections—Parliamentary, and Municipal ; the *Rules* relating to the fees of Clerks of the Peace ; the General Orders of the Court of Appeal ; the *Rules* of the Privy Council ; and the additional *Rules* of the Supreme Court of Ontario, which have been passed since the *Judicature Act* came into operation, together with the Tariffs of Costs, of the High Court of Justice, and County Courts.

Since the publication of the first volume, many cases have been reported bearing on the subjects discussed therein, and in the Table of Addenda, references are to be found to many of these additional cases.

The table of Cases, Statutes, and *Rules* cited, which is contained in this volume, comprise all the Cases, Statutes, and *Rules*, cited in either volume. The index in this volume is an index of the whole work.

I have great pleasure in acknowledging the obligation I am under to my friend, Mr. A. B. AYLESWORTH, for having kindly read the greater part of the sheets of this volume, as they passed through the press, and for having favoured me with some valuable suggestions, of which I gladly availed myself.

OSGOODE HALL,  
March, 1885.

G. S. H.

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322	" " s. 156 .....	" " s. 19 .....	771
81	" " s. 184 .....	" " s. 20 .....	716 adda.,
323	" " s. 185 .....	" " s. 21 .....	771, 772
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30	" " s. 188 .....	" " s. 23 .....	763 adda.
194	" " s. 189 .....	" c. 16, (O.) .....	524 adda.
299	" " s. 191 .....		
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N. B.—The  
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N. B.—The reader is particularly requested to make the correction on page 226, in *Ordl.* 420, as mentioned in the following table. The other additions are for the most part references to cases reported, and statutes passed, since the publication of the 1st volume :

## A D D E N D A.

Page 2. At the end of 3rd paragraph, add : "Where the matter is one of equity jurisdiction, the practice of the former Court of Chancery, save as expressly altered by *The Judicature Act and Rules*, now governs, in all the Divisions : *Walmsley v. Mundy*, 50 L. T. N. S. 317 ; 53 L. J. Q. B. 304."

7. 1st line, after "(see Seton 1546)," add, "*Hendrie v. Beatty*, 29 Gr. 423."

25. 5th line from bottom, add, "a solicitor employed by a mortgagor and mortgagee, to prepare a mortgage, after completion of the mortgage holds the title deeds for the mortgagee, and cannot claim any lien thereon, for costs due by the mortgagor: *Ex parte Quinn*, 49 L. T. N. S. 811,"

26. After the 3rd paragraph, add, "costs incurred by an administrator in administration proceedings, are a charge upon the estate, and upon his death, the administrator *de bonis non* takes the estate subject to the charge, and cannot compel delivery of the papers until payment of such costs : *Re Watson*, 50 L. T. N. S. 205 ; 53 L. J., Ch. 305."

28. 17th line from bottom, after "18 C. L. J. 56," add, "*Hall v. Griffith*, 5 O. R. 478 ; *Friedrich v. Friedrich*, 10 P. R. 308."

29. 7th line from top, after "4 Chy. Ch. R. 63," add, "*Dawson v. Moffatt*, 10 P. R. 366."

13th line from top, after "*Re Harrahl*, 48 L. T. 352," add "This case was subsequently reversed in appeal, on the ground that the solicitor of a trustee in default, has no lien on the trust estate, until the default is made good : see 51 L. T. N. S. 441."

30. 7th line from bottom, after "19 Ves. 261," add, "or for persuading his client, to give him money to be used to bribe the jury, before whom the client was to be tried for a crime ; *Re Titus*, 5 O. R. 87 ; 20 C. L. J. 110."

3rd line from bottom, add, "The Court will not exercise its summary jurisdiction over a solicitor to compel repayment of a loan : *Re Bryant*, 50 L. T. N. S. 450."

31. After 3rd paragraph, add, "an order striking a solicitor off the Roll for misconduct is not a criminal proceeding, and is appealable : *Re Hardwick*, 49 L. T. N. S. 584 ; 53 L. J. Q. B. 64."

36. After 4th paragraph, add, "The High Court has now power, under 48 Vict. c. 13, s. 11 (O.), to appoint an administrator, or administrator *ad litem*."



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- Page 40. 2nd line from top, "after 3 Ch. D. 198," add, "but see now 48 Vict. c. 13, s. 12 (O.) which enables administration to be granted in certain cases against an executor *de son tort*."
- 10th line from bottom, after "2 Gr. 149," add, "ante p. 36."
41. 20th line from bottom, after "2 Gr. 310," add, "but see *Re Moore, McAlpine v. Moore*, 21 Chy. D. 778, where, under *The Trustee Act*, 1850, a trustee was appointed to discharge the duties of an executrix who retired."
- 29th line from bottom, after "19 Gr. 461," add, "but see *Wallis v. Wallis*, 9 Ir. Chy. 511; *Prosser v. Messopp*, 29 W. R. 439; MacLennan, 2nd ed., 139."
42. 3rd paragraph; add, "nor an infant administrator: see *Merchants' Bank v. Monteith*, 10 P. R. 334; 20 C. L. J. 377."
45. At the end of first paragraph, add, "but an action commenced by an executor before probate, will be stayed as vexatious: *Tarn v. Commercial Banking Co.*, 12 Q. B. D. 294; 50 L. T. N. S. 365."
- 6th line from bottom, after "44 L. T. N. S. 585," add, "6 Q. B. D. 626; but see *Burlinson v. Hall*, 12 Q. B. D. 347; 50 L. T. N. S. 723; 53 L. J. Q. B. 222."
- Last line, after "36 Q. B. 295," add, "*Re Robinson*, 27 Ch. D. 160."
60. After 3rd paragraph, add, "the Court has jurisdiction to order any proceeding to be amended which contains scandalous matter, *e. g.*, scandalous statements in a bill of costs may be ordered to be struck out: *Re Miller & Miller*, 51 L. T. N. S. 533; *Erskine v. Gartshore*, 18 Ves. 114."
72. After 1st paragraph, add, "when the parties in both causes are the same, no order is required to use the depositions, but when they are not, the application to read depositions in another cause, must be made on notice: *Dunlop v. Corporation of York*, 2 Chy. Ch. R. 417."
79. 13th line from top, after "7 P. R. 729," add, "but see *post* p. 813."
- 15th line from bottom, after "P. R. 39," add, "but see *post* p. 813."
95. 11th line from top, add "the Master in Ordinary has also now, in matters pending before him, the like jurisdiction as the Master in Chambers had on the 15th March, 1884. *Rule S. C. 541, post* p. 805."
99. 11th line from top after "17 Gr. 397," add, "even though the income of the whole estate be bequeathed to another for life: *Toomey v. Tracey*, 4 O. R. 708, and see further as to interest on legacies: *Re Judkin's Trusts*, 25 Ch. D. 743; 50 L. T. N. S. 290; *Re Olive, Olive v. Westerman*, 50 L. T. N. S. 355."
104. Paragraph 3, 10th line, after "48 L. T. N. S. 279," add, "22 Ch. D. 727; 9 App. Ca. 1; 50 L. T. N. S. 330; and see *Re Brier, Brier v. Erison*, 26 Ch. D. 238; but he is, for the loss occasioned by employing improper agents: *Fry v. Tapson*, 28 Ch. D. 368; 51 L. T. N. S. 326; or for negligently allowing money to remain too long in the hands of proper agents: *McCarter v. McCarter*, 7 O. R. 243; *Cann v. Cann*, 51 L. T. N. S. 770; *Re Mitchell, Mitchell v. Mitchell*, 52 L. T. N. S. 178."
- 4th line from bottom, after "S. 533," add, "23 Ch. D. 483; and see *Re Pearson, Oxley v. Searth*, 51 L. T. N. S. 692."
105. 16th line from bottom, for "p. 9," read "p. 94."

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Page 107. Paragraph 3, 3rd line, after "20 Gr. 221," add, "except where his cotenant is an infant : *Courcier v. Courcier*, 26 Gr. 307."

At foot of page, add, "no occupation rent should be charged against one who has been in occupation under mistake of title, in respect of the increased value arising from improvements, made by him, the costs of which are not allowed him : *McGregor v. McGregor*, 5 O. R. 617 ; *Munsie v. Lindsay*, 10 P. R. 173.

108. 2nd paragraph, add, "TENANTS FOR LIFE are not entitled to charge for repairs as against the inheritance, however substantial or lasting, *Lewin*, (7th ed.) 503 : *Re Smith*, 4 O. R. 518."

109. 1st line, after "21 Gr. 549," add, "*Munsie v. Lindsay*, 10 P. R. 173 ; *Plumb v. Steinhoff*, 2 O. R. 614."

116. After paragraph 6, add, "the Master cannot, however, inquire into the validity of the instrument upon which the plaintiff's action is brought, and upon which he has obtained judgment : *Bickford v. Grand Junction R. W. Co.*, 1 S. C. R. 696 ; see pp. 725, *et seq.* ; not even at the instance of parties added in his office : *McDougall v. Lindsay Paper Mills Co.*, 10 P. R. 247 ; 20 C. L. J. 133 ; *Wiley v. Ledyard*, 10 P. R. 182 ; 20 C. L. J. 142.

7th paragraph, 5th line, after "therewith" add, "*Wiley v. Ledyard*, 10 P. R. 182."

121. At the end of 1st paragraph, add, "but see *Ec parte Fewings*, 25 Ch. D. 338 ; 50 L. T. N. S. 109.

128. 3rd line from top, add, "and he may be added by the Master in his office under this Order : *Lindsay v. Bank of Montreal*, 13 Gr. 66 ; but see *Abell v. Parr*, 9 P. R. 564."

137. 16th line from bottom, after "9 P. R. 271," add, "but see *contra*, *Grant v. Grant* ; 10 P. R. 40 ; and, see now, 48 Vict. c. 13, (O.) s. 22."

147. Last line of 2nd paragraph after "48 L. T. N. S. 403," add, "22 Ch. D. 430 ; followed, *McMillan v. Wansborough*, 10 P. R. 377 ; 20 C. L. J. 387."

149. 2nd line from bottom after "1 Chy. Ch. R. 31," add, "*Mulkern v. Doerks*, 51 L. T. N. S. 429."

158. 3rd line of paragraph 2, after "7 Gr. 308," add, "and see *Searle v. Choat*, 25 Ch. D. 723 ; 50 L. T. N. S. 470."

159. 2nd line of paragraph 5, strike out "a judgment creditor," and insert "an execution creditor (*Brooke v. Brooke*, before Ferguson, J., 28 May, 1884.)"

172. After note to Ord. 311, add, "But see now 48 Vict. c. 13, s. 22 (O.) which appears to abolish revisions, except in the case of taxations by Deputy Registrars, or in cases in which infants are concerned, who are not represented by the Official Guardian."

181. After 5th paragraph, add "A consent cannot be withdrawn, even before the order has been drawn up, although the facts were not opened to the Court : *Harvey v. Croydon Union R. S. A.*, 26 Ch. D. 249 ; 50 L. T. N. S. 291 ; *Elsas v. Williams*, 52 L. T. N. S. 39. But a judgment by consent to establish a forged will, may be set aside on the forgery being subsequently discovered : see *Priestman v. Thomas*, 9 P. D. 210 ; 51 L. L. T. N. S. 843."

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Page 183. Note in margin of 2nd paragraph, "see now 48 Vict. c. 13, s. 17 (O.)"

196. After 1st paragraph, add, "and see *Boswell v. Coaks*, 27 Ch. D. 424; 51 L. T. N. S. 242."

223. 6th line from bottom, for "seven" at the end of the line read, "two (*Martens v. Birney*, 10 P. R. 368; 20 C. L. J. 39.)"

226. At the end of paragraph 1, add, "a judgment pronounced by a single Judge, on a hearing on further directions, is not appealable to a Divisional Court, except by consent: *Wansley v. Smallwood*, 10 P. R. 233; 20 C. L. J. 174.

*Ord.* 420, 2nd line, after "decree," add, "or on bill and answer, or on appeal from a Master's report."

241. 11th line from bottom, after "case," add, "*McDougall v. Lindsay Paper Mills Co.*, 10 P. R. 248."

245. At the end of paragraph 5, add, "*McDougall v. Lindsay Paper Mills Co.*, 10 P. R. 247; 20 C. L. J. 133."

246. 3rd line from top, for "Wednesday" read "Friday."

248. Paragraph 2, after "*Inglis v. Gilchrist*, 10 Gr. 301," add, "*McIntyre v. Thompson*, 6 O. R. 710; 19 C. L. J. 393."

252. Paragraph 7, after "29th September, 1883," add, "5 O. R. 404; *Faulds v. Harper*, above cited, was subsequently reversed in appeal; see 9 App. R. 537."

254. Paragraph 3, add after "10 Gr. 306," "If the mortgagee retain the money he must apply it on account, *Ib.*"

Paragraph 5, 3rd line, after "1 Chy. Ch. R. 72," add, "nor is he entitled to charge him with the premiums paid, unless the insurance is effected under 42 Vict. ch. 20, *supra*; *McIntosh v. Ontario Bank*, 20 Gr. 24."

259. At the end of paragraph 1, add, "*Bell v. Sunderland Building Society*, 49 L. T. N. S. 555."

2nd paragraph, 6th line after, "48 L. T. N. S. 182," add, "22 Ch. D.) 549; *Smith v. Olding*, 50 L. T. N. S. 357; *Lewis v. Aberdare & P. Co.*, *Ib.* 451.

263. 19th line from bottom, after "6 P. R. 213," add, "*Gillen v. Roman Catholic Episcopal Corporation*, 7 O. R. 146."

264. At the end of paragraph 4, add, "*Webster v. Patteson*, 25 Ch. D. 626; 50 L. T. N. S. 252."

265. 15th line from top, after "circumstances," add, "this case was subsequently reversed in appeal: see 10 App. R. 99."

25th line from top, after "*Miles v. Cameron*," add, "9 P. R. 502."

278. At the end of 5th paragraph, add, "and see now 48 Vict. c. 13, s. 12 (O.) which enables the Court to grant administration against an executor *de son tort* in certain cases."

283. At the end of first paragraph, add, "as between a separate creditor, and a partnership creditor, of the person whose estate is to be administered, the conduct of the proceedings is given to the former: *Re McRae*, 49 L. T. N. S. 544.

284. At the end of second paragraph, add, "9 App. R. 273."

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Page 290. At the end of third paragraph, add, "9 App. R. 273."

291. At the end of last line, add, "9 App. R. 273."

292. 5th line from bottom, after "3 Chy. Ch. R. 494," add, "*Thompson v Thompson*, 9 P. R. 526."

293. At the end of fourth paragraph, add, "But where there is delay after service of the writ in making the application, interim alimony may be allowed only from the date of the application, *Ib.* 9 P. R. 526."

At the end of fifth paragraph, add, "and alimony was allowed from the date of the service of the writ, where judgment was obtained for default of defence, it having been expressly asked by the notice of motion, but the alimony for the period prior to the judgment was directed to be allowed on the basis of interim alimony: *Hagarty v. Hagarty*, (before Boyd, C., 11th February, 1885.)"

319. After 7th paragraph, add, "In the case of adults, an order of the Court for sale operates as a conversion, and the share of a person dying after the order, but before sale, will descend as personalty: *Hyett v. Meekin*, 25 Ch. D. 735; as to lunatics see *R. S. O. c. 40 s. 69*; *Re Barker*, 17 Ch. D. 241; 44 L. T. N. S. 33; 50 L. J. Chy. 334; *Re Tugwell*, 51 L. T. N. S. 83."

325. 12th line from top, after 403, add, "*McMillan v. Wansborough*, 10 P. R. 377; 20 C. L. J. 387."

326. 10th line from bottom, after "24 Gr. 474," add, "*Brookes v. Conley*, 21 C. L. J. 36."

327. After 2nd paragraph, add, "but see now 48 Vict. c. 13, s. 5, (O.) which enables the Court to make a declaratory judgment in cases where no consequential relief can be given."

336. 1st line after "Gr. 81," add, "and see *Re Lyons*, 20 C. L. J. 33; 10 P. R. 150; *Boulton v. Rowland*, 4 O. R. 720; *Bratty v. O'Connor*, 5 O. R. 747; 20 C. L. J. 210; *Looney v. Cairns*, before Boyd, C., 14th January, 1885."

340. 15th line from top, add, "his jurisdiction has been extended by *Rule S. C.* 548, and 48 Vict. c. 13, s. 13 (O.); see *post* pp. 812, 813."

352. 6th line from bottom, add, "by direction of the Judges of the Chancery Division, all applications to the Chancery Division, under *The Vendors' and Purchasers' Act*, are to be brought on petition, which is to be set down for hearing on a Wednesday, and a copy of the petition is to be left for the use of the Judge."

357. 3rd line from top, after "19 C. L. J. 234," add, "*S. C. sub nom. Rew Anthony*, 9 P. R. 545; but see *Pepper, Pepper v. Pepper*, 50 L. T. N. S. 580."

363. 5th line from bottom, add, "*Grant v. Grant*, 9 P. R. 211; and see *MacLennan*, 2nd ed., p. 139; but see *Wallis v. Wallis*, 9 Ir. Chy. 511; *Prosser v. Mossop*, 29 W. R. 439."

364. Last line of first paragraph, add, "21 Ch. D. 121."

365. 3rd paragraph, 7th line, after "8 P. R. 542," add, "but see now 48 Vict. c. 13, s. 12 (O.) which enables the Court to grant administration against an executor *de son tort* in certain cases."



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- Page 367. 5th line from bottom, after "211," add, "4 O. R. 18."
369. 9th line from bottom after, "*Young v. Wright*," add, "8 P. R. 198."
370. After 3rd paragraph, add, "a partition, or sale, cannot be directed against a tenant for life of the whole estate, on application of those entitled in remainder: *Muscar v. Bolton*, 5 O. R. 164.
- 22nd line from bottom, after 14th April, 1875, add, "and see *Laplane v. Seamen*, 8 App. R. 560."
371. 16th line from bottom, after "20 Gr. 221," add, "*Re Kirkpatrick, Kirkpatrick v. Stevenson*, 10 P. R. 4, except in favour of an infant co-tenant: *Courcier v. Courcier*, 26 Gr. 307."
- 6th line from bottom, add, "only improvements made by a tenant in common to prevent the estate going to ruin are recoverable: *Leigh v. Dickson*, 12 Q. B. D. 194; 50 L. T. N. S. 124.
- As against an execution creditor of the tenant who has been in possession, the other tenants cannot charge his share, with the excess of rents received by him, in priority to the execution: *McPherson v. McPherson*, 10. P. R. 140.
- Where a sale is directed in a partition action, the Master should inquire as to incumbrances existing on the shares of parties interested, up to the time of the sale, and not merely up to the commencement of the action; such persons as have incumbrances, if not already parties, should be made parties under *Ord.* 244, or their rights will not be affected: see *R. S. O.* c. 101, s. 21, s.a. 2; *Robson v. Robson*, 10 P. R. 324; 20 C. L. J. 192."
373. After first paragraph, add, "the Christmas vacation is excluded in the computation of the month: *Blake v. Building and Loan Association*, 10 P. R. 153; 20 C. L. J. 34.
375. After first paragraph, add, "and see *Re Batt, Wright v. White*, 9 P. R. 447." After second paragraph, add, "and see *Re Stuebing, Anthes v. Dewar*, 10 P. R. 236; 20 C. L. J. 193."
520. 2nd line from top, add, "See now 48 Vict. c. 13, s. 16 (O.) as to power of Court to remit penalties."
524. 5th line of note to *Rule* 114; after "45 Vict. c. 11, s. 1 (O.)" add, "48 Vict. c. 16 (O.)"
557. Add to second paragraph, "and see *Rule S. C.* 547 *post* p. 811, as to actions commenced in the Chancery Division."
571. 12th line from bottom for "pp. 57-8," read "pp. 577-8."
666. At the end of note to *Rule* 4, add, "as to whether petitioner may sign by attorney, see *Re Wallace*, 51 L. T. N. S. 551."
691. At the end of note to *Rule* 4, add, "as to whether petitioner may sign by attorney, see *Re Wallace*, 51 L. T. N. S. 551."
716. 15th line from bottom, after "*Rule* 19, *post*," add, "It would seem now to be necessary to pay the money into Court with the privity of the Accountant of the Supreme Court, in like manner as other moneys are paid into Court: see 48 Vict. c. 13, s. 20 (O.)"
718. At the end of note to *Rule* 4, add, "as to whether the petitioner may sign by attorney, see *Re Wallace*, 51 L. T. N. S. 551."

Page 723.

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Page 723. 13th line from bottom, for "in times," read "in terms."

734. At the end of note to *Rule 32*, add, "see further as to costs of election petitions, 48 Vict. c. 4 (O.)"

757. 16th line from bottom, add, "in the event of an appellant withdrawing his appeal, a respondent who has given notice under this *Order* may, on application, be allowed to proceed with his cross-appeal as an original appeal, and the original appellant may be permitted to deliver notice by way of cross-appeal: *The Beeswing*, 10 P. D. 18; 51 L. T. N. S. 883; 21 C. L. J. 118.

763. 3rd line from bottom, add, "and see further as to cases in which appeal lies from County Courts, 48 Vict. c. 13, s. 23 (O.)"

787. After *Rule X*, add, "The moneys and securities in the Court of Appeal were, by 48 Vict. c. 13, s. 19 (O.), also transferred to, and vested in, the Accountant of the Supreme Court, who, by s. 17 of the same Act, is constituted a corporation sole."

794. Add to note to *Rule 519*, "see now 48 Vict. c. 13, s. 17 (O.) which constitutes the Accountant of the Supreme Court a corporation sole."



U. W. O. LAW

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# RULES

OF THE

## COURTS OF QUEEN'S BENCH

AND

## COMMON PLEAS,

1856.

### ATTORNEYS.

The first Rule printed in the former collection of Rules of the Queen's Bench, and Common Pleas, (see *Harrison's Rules*, p. 9,) relating to the admission of Attorneys: and prescribing the time for filing articles and assignments thereof: and certain questions to be answered by the Articled Clerk, and the Attorney with whom he has served, is now superseded by the provisions of *R. S. O.* c. 140, s. 4, and the Rules of the Law Society. 90-93.

Rules as to admission of attorneys, &c.

The second Rule provided for certifying to the other Courts when an Attorney was struck off the roll: and for striking off the roll any Attorney who had been struck off the roll of any other Court upon receipt of a certificate of the fact from such other Court, and is now obsolete. (See vol. 1, p. 29.)

Rule as to striking attorney off roll.

All Attorneys of the Queen's Bench, Common Pleas, and Solicitors in Chancery, are now Solicitors of the Supreme Court of Judicature for Ontario, (*J. A.* s. 74.)

Attorneys are now solicitors of S. C.

When a Solicitor is ordered to be struck off the rolls, the order should now be drawn up striking him off all existing rolls of Attorneys and Solicitors, and off the roll of the Supreme Court, and further ordering that the name be not entered in any future list that may be made up: see *Re Martin*, and *Re Solicitor*, 1 Charley's Notes of Cases, p. 66. Where a Solicitor, struck off the rolls for misconduct, is a Barrister-at-Law, the Court may also direct the order to be transmitted to the Treasurer of the Law Society, and by Rule 148 of

Form of order to strike solicitor off rolls.



Law Society may be notified.

the Law Society, such Solicitor is *ipso facto* suspended from all the rights, powers, and privileges belonging to him as a member of the Law Society, which suspension will continue until such Solicitor is restored to the rolls.

Such suspension does not preclude proceedings being taken before the Benchers in Convocation, for disbarring or expelling such Solicitor from the Society : Rule of Law Society, 150.

#### RULES OF TRINITY TERM, 20TH VICT.

Rules of Q. B. & C. P. of T. T. 1856.

Whereas the practice of the Courts of Queen's Bench, and Common Pleas, in and for Upper Canada has been, to a great extent, superseded or altered by the Common Law Procedure Act, 1856, and it is expedient that the written rules of practice of the said Courts should be consolidated : It is therefore ordered that all existing rules of practice in either of the said Courts in regard to civil actions—save and except as regards any step or proceeding taken before these rules come into force—shall be, from and after the first day of Trinity term, 1856, annulled, and that the practice, to be thenceforth observed in the said Courts with respect to the matters hereafter mentioned, shall be as follows, that is to say :

Although the former *Rules* are rescinded : yet in cases unprovided for, resort is still to be had to the former practice : see *Rule* 168, *post* p. 537 ; and see *Golding v. Mackie*, 8 P. R. 237.

Rules 1-2 superseded.

**Rules 1-2** related to the Appearance Book, and entry of appearance in case of two or more defendants, and are now superseded by *Rules S. C.* 26, 56-59.

How far Rules of Q. B. & C. P. now in force.

As to the extent to which the *Rules* of the former Courts of Queen's Bench, and Common Pleas, continue in force : see *J. A.* ss. 12, 52, and note at the heading of the *Rules S. C.*, and see note vol. 1 pp. 1-2, the observations there made in regard to the Chancery Orders, being equally applicable to the rules of the Common Law Courts.

#### ATTORNEY AND GUARDIAN.

Rule 3 superseded.

**Rule 3** provided that an Attorney should be liable to attachment for not entering appearance, and is now superseded by *Rule S. C.* 60 to same effect.

Attorney not to be changed without order.

**4.** No Attorney shall be changed without the order of a Judge.

This Rule 22 *et seq.* to the pay

**Rule 5** dian, to pr authority t actions spec chein any t by his next of Chancery an infant de the action i

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This *Rule* 103 *b*, and it required, it i that he has a tiffs : *Cox v.*

**Rule 7** ab effete.

**Rule 8** pro without leave

**Rule 9** pro for pleading.

**Rule 10** p judgment rec of such judgm the number o and in default judgment as by the defend proper officer ings of the recovered, th therein stated plea.

This *Rule* w

This *Rule* is still in force, and see *Chy. Ord.* 49, and note, vol. 1, p. 22 *et seq.* The order will now be granted without any provision as to the payment of costs; *Grant v. Holland*, 3 C. P. D. 180.

**Rule 5** provided that a special admission of prochein amy, or guardian, to prosecute, or defend, for an infant, shall not be deemed an authority to prosecute, or defend, in any but the particular action or actions specified. This *Rule* seems to be effete. An admission of a prochein amy to prosecute is no longer necessary. An infant may now sue by his next friend, in the manner heretofore practised in the Court of Chancery: *Rule S. C.* 96. When a guardian *ad litem* is appointed to an infant defendant, his authority to act as guardian only extends to the action in which he is appointed.

Rule 5, as to admission of prochein amy, and guardian, to prosecute, or defend, superseded.

#### JOINDER OF PARTIES.

**Rule 6** provided that when a plaintiff amended his writ by adding parties, after notice by defendant, or upon a plea in abatement, he must file the written consent of the parties so added.

Rule 6 superseded.

This *Rule* however appears to be now superseded by *Rule S. C.* 103 *b*, and it has been held that a consent in writing is no longer required, it is sufficient if the solicitor for the existing plaintiff states that he has authority to consent on behalf of the proposed new plaintiffs: *Cox v. James*, 19 Ch. D. 55: 45 L. T. N. S. 471.

#### PLEADINGS.

**Rule 7** abolished side-bar rules for time to declare, and is now effete.

Rules 7-10 superseded.

**Rule 8** provided that a defendant should not withdraw his plea without leave, and is now superseded by *Rule S. C.* 170 *c*.

**Rule 9** provided that the long vacation should not count in time for pleading, and is now superseded by *Rules S. C.* 460, 461.

**Rule 10** provided that when a defendant shall plead a plea of judgment recovered, he shall in the margin of such plea state the date of such judgment, and if such judgment shall be in a Court of record, the number of the roll (if any) on which such proceedings are entered, and in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea.

This *Rule* would seem to be no longer in force: see *Rule 35 post* p. 501.

U. W. O. LAW

Where a statement of defence sets up a judgment recovered, the particulars required by this *Rule* should be stated in the pleading, and the omission thereof, would no doubt justify a motion to strike out, or amend, the pleading.

#### PAYMENT OF MONEY INTO COURT.

Rules 11-13  
superseded.

**Rule 11** dispensed with an affidavit verifying plaintiff's signature to authority to attorney to take money out of Court, and is now superseded by *Rule S. C.* 217.

**Rule 12** provided that where money is paid into Court, the plaintiff shall be entitled to the costs of the cause in respect of that part of his claim so satisfied in any event up to the time the money was paid in, whatever might be the result of other issues; and if the defendant succeeded in defeating the residue of the claim, he was to be entitled to the costs of his defence, commencing at "instructions for plea."

**Rule 13** provided that where money was paid into Court in several actions which were consolidated, and the plaintiff, without taxing costs, proceeded to trial on one and failed, he should be entitled to costs in the others up to the time of paying money into Court.

These *Rules* appear to be now superseded by *Rule S. C.* 428, which provides that subject to the provisions of *The Judicature Act*, costs of all proceedings are now to be in the discretion of the Court; and see *Rule S. C.* 218 as to plaintiff's right to costs where money paid in, is accepted in full satisfaction.

#### DEMURRER.

Rules 14-15  
superseded.

**Rule 14** provided for giving notice to join in demurrer, and is now superseded by *Rule S. C.* 195a.

**Rule 15** provided for setting down demurrers, special cases, special verdicts, and appeals from County Courts for argument, and is now superseded, as regards demurrers, and special cases, by *Rule S. C.* 202, and *Rule H. C. J. v.*

Appeals from County Courts must now be made to the Court of Appeal, *R. S. O. c.* 38, s. 19; *Ib.*, c. 43, ss. 34-42; and as to motions for judgment on special verdicts, it seems doubtful whether that practice can any longer prevail, as it would seem to be now the duty of the Judge before whom a case is tried, to direct what judgment is to be entered on any special verdict which may be found, *Rule S. C.* 273, and see *J. A.*, s. 28, and then any party dissatisfied may move to set aside the judgment: see *Rule S. C.* 510.

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**16.** The party whose pleading has been demurred to, shall, with his joinder in demurrer, or at any time

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within the time allowed for joining in demurrer, or within such further time as a Judge on application may allow, deliver to such opposite party a notice in writing, of all exceptions, intended to be taken on the argument to any preceding pleading of the party demurring, and in default of such notice, shall be precluded from arguing any such exception, and all exceptions whereof notice has been so given, shall be entered on the demurrer books, to be delivered to the Judges, and if the party setting down the case for argument shall omit to enter on the demurrer book any exception made by the opposite party, of which he has had due notice, the Court may, in its discretion, either give judgment in favour of such opposite party, or may strike the case out of the paper, and allow the opposite party reasonable costs for attending to argue the demurrer.

may except to previous pleading; notice of exception to be given, and included in demurrer book.

It is somewhat doubtful how far this *Rule* is still in force. It practically enabled a party whose pleading was demurred to, to demur to any previous pleading of the demurring party. That being the practical effect of the *Rule*, it might perhaps be reasonably urged that *Rule S. C. 191*, which provides that a demurrer shall be delivered in the same manner, and within the same time, as any other pleading in the action, is such an express provision on the subject, as to supersede the practice prescribed by this *Rule*, and to preclude a defendant who has delivered a statement of defence, from afterwards delivering exceptions in the nature of a demurrer to the statement of claim. In *MacAllister v. The Bishop of Rochester*, 5 C. P. D., 194; 42 L. T. N. S. 22, on the argument of a demurrer to part of the statement of defence, the defendant's counsel appears to have taken exception to the statement of claim, to which, however, no demurrer appears to have been filed, and the objection thus raised was held good, and judgment given for the defendant, although his statement of defence was held bad. Whether exceptions to the statement of claim had been delivered in that case, does not appear by the report, and the right of the defendant to object to the statement of claim was not apparently questioned.

As to whether this rule is still in force, quere.

U. W. O. LAW

If the *Rule* is still in force, it appears to apply to all the Divisions. Formerly in Chancery a demurrer could only be filed to the bill, not to the answer, but at law a demurrer could be filed to any pleading.

*The Judicature Act* has practically adopted the former common law practice in this respect.

Rules 17-18  
superseded.

**Rule 17** related to delivery of copies of demurrer books, special cases, or special verdicts for the judges, and is superseded as to demurrer books and special cases by *Rule H. C. J. vi.*

**Rule 18** provided that where there is a demurrer to a part of a pleading, only those parts of the pleadings to which the demurrer related, were to be included in the demurrer book. This rule seems to be no longer in force; and even if it were, owing to the different system of pleading now in use, it would be difficult in many cases to act upon it, and it would invariably lead to conflicts of opinion as to the parts of the pleadings necessary to be introduced. Under the present system it is the practice to embody in the demurrer book the whole of the pleadings. And though the demurrer be to part of a pleading, the Court, on the argument, may look at the whole record: *McAllister v. Bishop of Rochester*, 5 C. P. D. 194; 42 L. T. N. S. 22; *Rumohr v. Marx*, 29 Gr. 179; *Attorney General v. Midland*, 3 O. R. 511; 18 C. L. J. 441.

Where demurrer  
filed to part of a  
pleading, the  
whole of it may  
be looked at.

#### CHANGE OF VENUE.

Rule 19 super-  
seded.

**Rule 19** related to change of venue, and is now superseded by *Rule S. C. 254.*

#### PARTICULARS OF DEMAND AND SET-OFF.

Rules 20-22 not  
in force.

**Rule 20** provided for delivery of particulars of demand or set-off with the declaration, or plea. It seems to be no longer in force. Particulars of claim may, however, be still obtained on motion in Chambers: see *MacLennan*, 2nd ed., p. 167.

**Rule 21** provided that a defendant might obtain a summons for particulars before appearance. This *Rule* is no longer in force: see *Ross v. Gibbs*, 1 Charley's Chamber Cases 36. It is however still in the discretion of a Judge to order the delivery of particulars before appearance if a case therefor is made out.

**Rule 22** provided that defendant should be allowed the same time for pleading after the delivery of the particulars, as he had at the return of the summons, unless otherwise provided for, and seems to be no longer in force.

#### SECURITY FOR COSTS.

Rule 23 not in  
force.

**Rule 23** provided that applications for security must be made before issue joined, and has been held to be no longer in force: *Martano v. Mann*, 14 Ch. D. 419; *Arkerwright v. Newbold*, W. N. (80) 59; *Lydney and W. I. O. Co. v. Bird*, 23 Ch. D. 358; 48 L. T. N. S. 893; *Caswell v. Murray*, 9 P. R. 192; and see *Bank of Nova Scotia v. LaRoche*, 9 P. R. 503, and see *Rule S. C. 429.*

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## DISCONTINUANCE.

**Rule 24** related to discontinuance after plea, and is now superseded by the provisions of *Rules S. C.* 170-2. Rule 24 superseded.

## STAYING PROCEEDINGS.

**25.** In any action against an acceptor of a Bill of Exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only. Action against acceptor of bill may be stayed on payment of debt and costs in that action only.

This *Rule* seems to be still in force, and to apply to all Divisions of the High Court.

The holder of a dishonoured Bill of Exchange brought an action against the acceptor, and simultaneously with it instituted proceedings against him in bankruptcy. The action having been stayed on the payment of the debt and costs, the plaintiff claimed to hold the bill until he should have obtained the amount of his costs in bankruptcy, it was held that he was not so entitled, and that the bill should be delivered up to the defendant: *Cox v. Taylor*, 18 Jur. 963, and see *Smith v. Woodcock*, 4 T. R. 691; *Vaughan v. Harris* 3 M. & W. 542.

## COGNOVIT.—WARRANT OF ATTORNEY.—JUDGE'S ORDER FOR JUDGMENT.

**26.** No warrant of attorney to confess judgment in any action, or *cognovit actionem*, given by any person, after the first day of next Michaelmas term, shall be of any force, unless there shall be present some attorney on behalf of such person expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or *cognovit*, before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney; and in the affidavit of execution, the attendance of such attorney, and the fact of his being a subscribing witness, shall be plainly stated, which affidavit and the warrant of attorney, Cognovit to be executed in presence of attorney.

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or *cognovit*, shall be filed at the time of entering judgment thereon.

See note to *Rule 28 infra*. A *relucta verificatione* is not within this *Rule*, and does not require to be verified by affidavit: *Eukins v. Fraser*, 6 P. R. 297. A *cognovit* may be executed by the attorney of the party giving it: *Richmond v. Proctor*, 3 U. C. L. J. 202.

Leave to enter judgment on *cognovit*, when to be obtained.

**27.** Leave to enter up judgment upon any *cognovit* or warrant of attorney above one, and under ten years old, is to be obtained by order of a judge made *ex parte*, and if ten years old or more upon a summons, to shew cause.

See note to *Rule 28 infra*; and see *Rules S. C.* 404-7, 412, 425.

Defeasance to which any *cognovit* is subject, to be written on same paper.

**28.** Every person who shall prepare any *cognovit* or warrant of attorney to confess judgment, which is to be subject to any defeasance, shall cause such defeasance to be written on the same paper or parchment on which the *cognovit* or warrant is written, or cause a memorandum in writing to be made on such *cognovit* or warrant containing the substance or effect of such defeasance.

These *Rules*, 26-28, appear to be still in force, and to apply to all the Divisions of the High Court.

Who may attest *cognovit*.

An uncertificated attorney may attest: *Holgate v. Slight*, 2 L. M. & P., 662, but not an attorney's clerk: *Barnes v. Ward*, Barnes 42; *Paul v. Cleaver*, 2 Taunt. 360, nor a person not actually an attorney, though believed to be one: *Wallace v. Brockley*, 5 Dowl. 695, but where the defendant wrongfully misrepresented a person to be an attorney, the Court refused to set aside the judgment: *Cox v. Cannon*, 6 Dowl. P. C. 625; *Jeyes v. Booth*, 1 B. & P. 97; the plaintiff's attorney cannot properly act for the defendant: *Mason v. Kiddle*, 5 M. & W. 513; *Rice v. Linsted*, 7 Dowl. P. C. 153; *Durrant v. Blurton*, 9 Dowl. P. C. 1015; even though the latter consent: *Hutson v. Hutson*, 7 T. R. 7; *Pryor v. Swaine*, 2 D. & L. 37; *Joel v. Dicker*, 5 D. & L. 1; *Mason v. Riddle*, 8 Dowl. P. C. 207; *Cooper v. Grant*, 21 L. J. C. P. 197; *Hirst v. Hirst*, 17 Q. B. 387. The attorney must, in general, attend at the request of the defendant: *Gripp v. Bristow*, 6 M. & W. 807; *Rice v. Linsted*, 7 Dowl. P. C. 153, but the adoption by the defendant of an attorney present, not being the plaintiff's attorney, no matter how procured is sufficient:

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*Taylor v. Nicholls*, 6 M. & W. 91; *Walt on v. Chandler*, 2 D. & L. 802; *Oliver v. Woodroffe*, 4 M. & W. 650; *Case v. Benson*, 3 U. C. L. J. 132; *Lerinson v. Syer*, 2 L. M. & P. 557; and see *Meriden v. Lee*, 2 O. R. 451.

It is not necessary that the *cognovit* should be read over to the defendant, it is sufficient if its nature and effect be explained to him: *Oliver v. Woodroffe*, 4 M. & W. 650, but the neglect of an attorney chosen by the defendant to explain the instrument will not vitiate it *Hugh v. Frost*, 7 Dowl. P. C. 743; *Case v. Benson*, 3 U. C. L. J. 132, unless there be fraud or collusion; *Taylor v. Nicholls*, 6 M. & W. 91.

*Cognovit* need not be read, if explained.

It is advisable to state in the attestation clause that the requirements of the *Rule* have been complied with, but the attestation has been held sufficient, though omitting to state that the attorney was appointed by the defendant: *Oliver v. Woodroffe*, 7 Dowl. P. C. 168, or was named by him, or attended at his request: *Gay v. Hall*, 5 Dowl. & L. 422, and did not declare him to subscribe as defendant's attorney: *Knight v. Hasty*, 12 L. J. Q. B. 293; *Holt v. Kershaw*, 5 D. & L. 419; *Phillips v. Gibbs*, 16 M. & W. 208; but see *Everard v. Poppleton*, 5 Q. B. 181; *Hibbert v. Barton*, 2 Dowl. N. S. 434. The following form of attestation has been held sufficient: "Signed by the above named A. B. in my presence, and I declare myself to be attorney for the said A. B., and I subscribe my name as such his attorney:" see *Gay v. Hall*, 18 L. J. Q. B. 12; *Ledyard v. Thompson*, 11 M. & W. 40. The provision respecting attestation is for the benefit of the defendant, a third party cannot object to a judgment on the ground that the *cognovit* on which it is entered was not formally executed: *Chipp v. Harris*, 5 M. & W. 430; *Cocks v. Edwards*, 2 Dowl. N. S. 55; nor to the want of an affidavit of execution: *Potter v. Pickle*, 2 P. R. 391.

Attestation clause, form of.

A *cognovit* may be given in an action though no process has issued: *Walton v. Hayward*, 2 O. S. 468; *C. L. P. Act* s. 296. The practice of taking *cognovits* is not now very often resorted to since *R. S. O.* c. 118, s. 1, which avoids judgments recovered on *cognovits* given by insolvents for the purpose of giving a preference, or to defeat or delay creditors: see *Meriden v. Lee*, 2 O. R. 451; *Martin v. McAlpine*, 8 App. R. 675. The same result however is now arrived at, by a defendant appearing and delivering a defence and then consenting to an immediate judgment; *Turner v. Lucas*, 1 O. R. 623, affirmed in appeal, 10th September, 1884.

*Cognovit* may be given, though no process issued.

The application for leave to enter judgment must be made in Chambers: *Handley v. Roberts*, 17 Jur. 440. The motion can now be made to the Master in Chambers. It is irregular to enter judgment without leave, when leave is necessary: *Jones v. Jones*, 1 D. & R. 358. When the *cognovit* is ten years' old notice to defendant of the

Leave to enter judgment may be obtained in Chambers.

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motion cannot be dispensed with: *Nicholas v. Merit*, 9 Dowl. P. C. 101; *Fletcher v. Everard*, 13 L. J. Q. B. 44; but see *Croft v. Lord Eymont*, 8 Dowl. P. C. 95; *Wortham v. Tuck*, 9 Dowl. P. C. 335.

Omission of attorney to comply with Rule 28, effect of.

The omission of an attorney to comply with *Rule 28* does not invalidate the instrument, but subjects the attorney to punishment, on application to the Court: see *Shaw v. Evans*, 14 East. 576; *Partridge v. Fraser*, 7 Taunt. 307; *Sansom v. Goode*, 2 B. & Al. 568; *Barber v. Barber*, 3 Taunt. 465; *Burdekin v. Potter*, 1 Dowl. N. S. 134.

### EVIDENCE.

ADMISSION AND INSPECTION OF DOCUMENTS.—SUBPENA TO PRODUCE RECORDS.—DEPOSITIONS ON INTERROGATORIES.

Rules 29-30 superseded.

**Rules 29-30** related to admission of documents, and prescribed a form of notice to admit, and are superseded by *Rules S. C.* 240-243, Form No. 26.

Subpœna to produce original record not to issue without order.

**31.** No subpœna for the production of an original record, or of an original memorial from any registry office, shall be issued, unless a rule of Court, or the order of a Judge, shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document in such rule or order.

This *Rule* is still in force, and applies to all Divisions of the High Court. The application for the order may now be made to the Master in Chambers. The application should be supported by an affidavit showing the necessity for producing the original, and that the production of a certified copy will not be sufficient.

Depositions taken under order, or commission to be returned to the Clk. of C. & P.

**32.** All depositions of witnesses taken under the order of a Judge, rule of Court, or commission, shall be returned to, and filed in the office of the Clerk of the Crown and Pleas of the Court in which the action or proceeding is pending.

Quære, how far Rule 32 in force.

It is doubtful whether this *Rule* is now in force. In the case of commissions to take evidence, the commission now usually expressly directs the commission, and depositions, &c., to be returned to some particular officer named therein, usually the officer by whom the commission is issued. Formerly commissions were only issued from the head offices at Toronto, but under the new procedure they are issued from the local offices, and are generally made returnable to the office from whence they issue: see *Rule S. C.* 297. Possibly, in the case of evidence taken under orders containing no

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**Rule 38** abo force.

**39.** Upon an affidavit s be made, and office; and t shall deposit and five shill

express direction to the contrary, the provisions of this *Rule* might still be held applicable, and the words Clerk of the Crown, would in that case be held to mean the Registrar of the Division in which the action is pending. See En. R. 33.

#### ISSUE BOOKS.

**Rule 33** provided for delivery of issue books, and was rescinded by Rule 1 of February 7, 1876 : see *post* p. 577. Rule 33 rescinded.

#### TRIAL.—TRIAL BY PROVISIO.—ASSESSMENT.—NOTICE OF TRIAL, &c.

**Rule 34** defined "short notice of trial" to be four days' notice. It is now superseded by *Rule S. C.* 259, which provides that "short notice of trial" is to be five days' notice. Rule 34 superseded.

**Rule 35** provided that on a replication, or other pleading of *nul tiel record* the party pleading might give four days' notice to defendant to produce the record, otherwise judgment. This *Rule* appears to be no longer in force : see *ante* p. 493. Rules 35-38 not in force.

**Rule 36** provided for giving notice of trial. It is now superseded by *Rule S. C.* 255.

**Rule 37** provided that notice of a trial at bar should be given to the Clerk of the Crown and Pleas of the Court before giving notice of trial to the party. It appears to be now obsolete. Under *Rule S. C.* 257, every trial of any question or issue of fact by a jury, shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges. This would seem to supersede the old practice of trials at bar, which were trials before the Court *in banc* and were only ordered in the discretion of the Court, except in cases in which the Crown was interested when a trial at bar might be claimed by the Attorney-General as of right : Arch. Pr., 13th ed. 346, *R. S. O. c.* 39, ss. 33-35.

**Rule 38** abolished rules for trial by proviso and is no longer in force.

#### VIEW.

**39.** Upon any application for a view, there shall be an affidavit stating the place at which the view is to be made, and the distance thereof from the Sheriff's office ; and the party obtaining the order for the view, shall deposit with the Sheriff the sum of six pounds and five shillings in case of a common jury, and eight

Party requiring view, to deposit with sheriff sum to pay expenses.

pounds and ten shillings in case of a special jury, if such distance do not exceed five miles; and seven pounds and fifteen shillings in case of a common jury, and ten pounds fifteen shillings in case of a special jury, if the distance be above five miles; and if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the party who obtained the view, or his attorney, and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such party or his attorney to the Sheriff; and the Sheriff shall pay and account for the money so deposited according to the scale following, that is to say :

	£	s.	d.
For travelling expenses to the Sheriff, Shewers, and Jurymen—Expenses actually paid, if reasonable.			
Fee to the Sheriff, when the distance does not exceed five miles from his office .....	0	10	0
Where such distance exceeds five miles .....	0	15	0
In case he shall be necessarily absent more than one day—then for each day after the first, a further fee of....	0	15	0
Fee to each of Shewers—the same as to the Sheriff, calculating, &c.			
Fee to each common jurymen, per diem .....	0	5	0
Fee to each special jurymen, per diem .....	0	10	0
Allowance for refreshment to the Sheriff, shewers, and jurymen, common or special, each, per diem .....	0	5	0
To the Sheriff for summoning each jurymen, whose residence is not more than five miles distant from the Sheriff's office .....	0	2	0
And for each whose residence exceeds five miles from Sheriff's office .....	0	3	0

This *Rule* is still in force, and applies now to all the Divisions of the High Court, except so far as it is modified by 46 Viet. c. 7, ss. 131, 136 (O.) and 29-30 Viet. c. 46 s. 1: see Arch. Pr., 13th ed., 339; *Rules S. C.*, 432, 445.

46 Viet. c. 7, s. 131 46 Viet. c. 7, s. 131, is as follows: "Where, in any civil case, or any case on a penal statute now pending, or hereafter to be brought in the High Court, and relating to matters within the legislative authority of the Province it appears to such Court, or to any Judge thereof in vacation, that it will be proper and necessary that the jurors, or some of them, who are to try the issues in such case, should have a view

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#### NEW TRIAL JUDGMENT

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See En. R. 53.  
13th ed. 1227.

of the place in question in order to their better understanding the evidence that may be given upon the trial of such issues, whether such place be situate within the county or united counties in which the venue is laid, or without such county or united counties, in any other county, such Court or Judge may order a rule to be drawn up containing the usual terms; and if such Court or Judge thinks fit, also requiring the party applying for the view to deposit in the hands of the sheriff of the county or united counties in which the venue in any such case is laid, a sum of money to be named in the rule, for payment of the expenses of the view."

29 & 30 Vict. c. 46, s. 1, is to the same effect, except that it extends to criminal cases also.

For form of order for a view, see Har. C. L. P. Act, 2nd ed., 645, note *f*.

#### NEW TRIALS—MOTION IN ARREST OF JUDGMENT— JUDGMENT NON OBSTANTE VEREDICTO.

**Rule 40** regulated the time for moving for new trials, or in arrest of judgment, or for judgment *non obstante veredicto*; and provided that such motions could not afterwards be made, unless entered in a list of postponed motions by leave of the Court. This *Rule* is superseded by *Rules* S. C. 307, 308, 510, 527-531. Since *The Judicature Act* motions in arrest of judgment, and for judgment *non obstante veredicto* are no longer made. See Arch. Pr., 13th ed., 416, 418.

*Rule 40 not in force.*

**41.** No suitor who appears in person, shall be at liberty to set down any motion in such list of postponed motions, without the express leave of the Court.

Suitor appearing in person cannot enter motion in list of postponed motions without leave

See En. R. 51. This *Rule* appears to be still in force: Arch. Pr., 13th ed., 1226. When the Court has not time to hear all the motions desired to be made for new trials, or to set aside judgments, &c., within the prescribed time, a list of postponed motions is made out, in which is contained the cases in which the parties have been ready to move, but which the Court has not been able to hear within the prescribed time.

**42.** No affidavit shall be used in support of a motion for a new trial in any case, unless such affidavit shall have been made within the time limited for the making of such motion, without the special permission of the Court for that purpose.

Affidavit in support of new trial to be made within time limited for moving.

See En. R. 53. This *Rule* appears to be still in force: Arch. Pr., 13th ed., 1227.

Notice of entry of motion in list of postponed motions to be served on opposite party.

**43.** If such motion as above mentioned be entered in such list of postponed motions, the attorney, who has instructed counsel to make the motion, shall give notice of it to the attorney of the opposite party, otherwise, judgment signed on behalf of the opposite party shall be deemed regular, and every suitor who appears in person, shall give a similar notice.

This *Rule* appears to be still in force: Arch. Pr. 13th ed. 1227. It refers to motions for new trials. See note to *Rule 41 supra*.

Rule 44 superseded.

**Rule 44** provided that if the rule for a new trial were silent as to costs, the costs of the first trial shall not be allowed to the successful party, though he succeed in the second. This *Rule* appears to be now superseded by *Rule S. C. 428* by which the costs are now in the discretion of the Court: *Green v. Wright*, 46 L. J. C. P. 427: Arch. Pr., 13th ed., 1232.

Rule for new trial on payment of costs, how rescinded for non-payment.

**45.** No rule granting a new trial to a party, on condition of payment of costs, or other condition, shall be discharged, on account of default in performing such condition by a rule absolute in the first instance; but a rule for such discharge shall issue, which shall make itself absolute, unless cause be shewn on or before the day mentioned for that purpose in the rule and which shall in no case be earlier than the fourth day inclusive, after service thereof.

The principle on which this *Rule* is based would seem to be still in force, and applicable to all the Divisions of the High Court. The proper procedure now would, however, appear to be to give notice of motion to discharge the rule for the new trial: see *Rule S. C. 404*.

As to when rule will be rescinded when defendant refuses to pay costs: see *Van Every v. Drake*, 3 P. R. 84.

#### JUDGMENT.

Rules 46-47 not in force.

**Rule 46** abolished rules for judgment, and is now obsolete.

**Rule 47** provided that all judgments, whether interlocutory or final, should be entered of record of the day when signed, and should not have relation to any other day; but that it should be competent for the Court, or a Judge, to order a judgment to be entered *nunc pro tunc*; and appears to be now superseded by *Rules S. C. 326, 327*.

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**Rule 53** prov any person to

## COSTS—SETTING OFF DAMAGES, OR COSTS.

**48.** One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase, if any, shall be given by the attorney of the party, whose costs are to be taxed to the other party or his attorney in all cases where a notice to tax is necessary.

One day's notice of taxation sufficient.

See En. R. 59. This *Rule* appears to be still in force : Arch. Pr., 13th ed., 431.

**49.** One appointment only shall be deemed necessary for proceeding in the taxation of costs or of an attorney's bill.

One appointment for taxation is sufficient.

See En. R. 60. This *Rule* appears to be still in force : Arch. Pr., 13th ed., 432.

**50.** Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian.

Notice of taxation unnecessary when defendant has not appeared.

This *Rule* is still in force : see Arch. Pr., 13th ed., 431. See Eng. R. 61, notwithstanding this *Rule* notice is necessary when the defendant has done that which is equivalent to appearing, such as consenting to a Judge's order or the like : *Lloyd v. Kent*, 5 Dowl. 125.

**Rule 51** provided that costs should follow the result of issues of law and fact, and also made provision as to the costs of the trial, and is now superseded by *Rule S. C. 428* which leaves the costs of all proceedings in the discretion of the Court.

Rule 51 superseded.

**52.** No set-off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought ; provided, nevertheless, that interlocutory costs in the same suit awarded to the adverse party may be deducted.

Set-off of damages and costs not to prejudice, attorney's lien.

See En. R. 63. This *Rule* appears to be still in force : Arch. Pr., 13th ed., 144, but see *Rule S. C. 436* ; *Holmsted's Manual* Pr. 181 ; *Re Harrold*, 48 L. J. N. S. 352 ; *Barker v. Heming*, 5 Q. B. D. 609 ; *Cuthbert v. Commercial Travellers' Association*, 7 P. R. 255.

As to application of *Rule*, see *Little v. Philpotts*, 8 Jur. N. S. 1175 ; *Young v. Hobson*, 8 P. R. 253.

**Rule 53** provided that no privilege shall hereafter be allowed any person to exempt him as plaintiff from the operation of any

Rule 53 obsolete.

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statute or rule of Court which restrains costs on any causes of action of the proper competence of the County Court, and appears to be now obsolete.

#### EXECUTION.

Rules 54-56 not in force.

**Rule 54** provided that no writ of execution shall issue until the proceedings to the end of the judgment are duly entered on the roll; nor that any writ against lands should issue until the judgment has been duly minuted and docketed, and appears to be now obsolete.

**Rule 55** related to the issue of writs of execution and the indorsements to be made thereon, and is now superseded by *Rules S. C.* 347, 348, 351.

**Rule 56** provided that every writ of execution shall be tested in the name of the Chief Justice of the Court from which the same issued, or in case of a vacancy of such office, then in the name of the senior puisne Judge of the said Court, and is now superseded by *Rule S. C.* 9, which provides that all writs are now to be tested in the name of the President of the High Court of Justice.

#### PROCEEDINGS AGAINST GARNISHEE.

Proceedings against garnishee in what Court to be taken

**57.** All writs, rules, orders, or other proceedings against a Garnishee, shall be issued, taken, and had in the Court in which the judgment was rendered in favour of the party applying to attach the debt due to his judgment debtor.

The principle of the *Rule* remains in force, and proceedings against a Garnishee, should now be conducted in the same Division of the High Court, as that in which the attaching creditor recovered his judgment.

Entry of garnishee proceedings in debt attachment book.

**58.** The entries of the proceedings against a Garnishee, in the debt attachment book, shall be made according to the form hereafter given.

This *Rule* still appears to be in force: see form *post* p. 552.

#### REVIVOR AND SCIRE FACIAS.

Rules 59—63 not in force.

**Rule 59** provided that a plaintiff shall not be allowed a rule to quash his own writ of *scire facias*, or revivor, after a defendant has appeared, except on payment of costs. Writs of *sci. fa.* are now abolished, and proceedings of that nature are commenced by writ of summons, as in other cases: *Archd. Pr.*, 13th ed., 210, 935; *Rule S. C.* 1. Writs of revivor are also now abolished, and proceedings of that nature are now regulated by *Rules S. C.* 384—391, and see *Holmested's Manl. Pr.*, p. 254.

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**Rule 60** provided that a *scire facias* upon a recognizance taken before a judge or commissioner in the country, and recorded at Toronto, shall be brought in the County of York only, and the form of recognizance shall not express where it was taken, and appears to be now obsolete and superseded by *Rule S. C. 20*.

**Rule 61** provided that no judgment shall be signed for non-appearance to a *scire facias*, without leave of the Court or a Judge, unless defendant has been summoned, but such judgment may be signed by leave after eight days from the return of one *scire facias*, and is now obsolete, being superseded by *Rule S. C. 315*.

**Rule 62** provided that a notice in writing to the plaintiff, his attorney, or agent, shall be sufficient appearance by the bail, or defendant, on a *scire facias*, and is now obsolete, being superseded by *Rules S. C. 51, 55*.

**Rule 63** provided for the issue of rules to appear, plead, rejoin, join in demurrer, &c., and is now obsolete, the practice in *scire facias* proceedings being now the same as in other actions.

#### ENTRY OF SATISFACTION ON ROLL.

**64.** In order to acknowledge satisfaction of a judgment, it shall be requisite only to produce a satisfaction piece in form as hereinafter mentioned, and such satisfaction piece shall be signed by the party or parties acknowledging the same or their personal representatives, and their signatures shall be witnessed by some practising attorney, expressly named by him or them, and attending at his or their request to inform him or them of the nature and effect of such satisfaction piece before the same is signed; which attorney shall declare himself in the attestation thereto to be the attorney for the person so signing the same, and state he is witness as such attorney (provided that a Judge at Chambers may make an order dispensing with such signature under special circumstances, if he think fit); and in cases where the satisfaction piece is signed by the personal representative of a party deceased, his representative character shall be proved by the production of the probate of the will, or of the letters of administration, to the officer in custody of the judgment roll.

Satisfaction of judgments, entry of.

U. W. O. LAW



*Form of Satisfaction Piece.*

Form of satisfaction piece.

In the

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A. D. 185

to wit. Satisfaction is acknowledged  
between plaintiff and defendant  
in an action for £ and costs. And  
do hereby expressly nominate and appoint  
attorney at law to witness  
and attest execution of this acknowledgment  
of satisfaction.

Judgment entered on the

day of

Roll No.

Signed by the said in the  
presence of me of one of the  
attorneys of the Court of

And I hereby declare myself  
to be attorney for and on behalf of  
the said expressly  
named by and attending at  
request to inform of the nature  
and effect of this acknowledgment of  
satisfaction (which I accordingly did  
before the same was signed by me).  
And I also declare that I subscribe my  
name hereto as such attorney.

(Signature)

the above

named  
plaintiff.

Date.

This Rule is still in force and applies to all the Divisions of the  
High Court. See En. R. 80, Arch. Pr. 13th ed., 638.

Satisfaction piece where to be entered.

**65.** Every satisfaction piece must be entered in the principal office of the proper Court at Toronto, and every deputy clerk of the Crown shall transmit the judgment roll and papers belonging thereto for that purpose, upon the satisfaction piece being exhibited to him, unless such roll shall have been previously transmitted under the direction of the Common Law Procedure Act, 1856, sec. 15.

This Rule seems to be still in force. See, however, Rule S. C. 507.

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## BAILABLE PROCEEDINGS AND BAIL.

**66.** Where the defendant is described in the writ of *capias*, or affidavit to hold to bail, by initials, or by wrong name, or without a Christian name, the defendant shall not for that cause be discharged out of custody, or the bail bond be delivered up to be cancelled on motion for that purpose, if it shall appear to the Court that due diligence has been used to obtain knowledge of the proper name.

Misnomer of defendant in bailable proceedings, effect of.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court.

A defendant arrested, if summoned by a wrong name may still be discharged, and have the bail bond delivered up to be cancelled, unless the plaintiff can shew that he has exercised diligence to ascertain the right name: *Ladbroke v. Phillips*, 1 H. & W. 109; *Rosael v. Hartley*, 7 A. & E. 522; and in determining the question whether due diligence has been used, the Court will consider all the circumstances; see *Hicks v. Marreco*, 1 C. & M. 84; *Finch v. Cocks*, 2 C. M. & R. 496; *Lyon v. Walls*, 2 M. & Sc. 393; *Lindsay v. Wells*, 3 Bing. N. C. 777.

Discharge of defendant for misnomer.

**Rule 67** provided that an action may be brought upon a bail bond by the sheriff himself, in either Court, and is now obsolete.

Rule 67 obsolete.

But such an action by the sheriff could now be brought in either Division of the High Court.

**68.** In all cases where the bail bond shall be directed to stand as a security, the plaintiff shall be at liberty to sign judgment upon it.

Plaintiff may sign judgment upon bail bond when it is ordered to stand as security.

**Bail to the sheriff.**—On the arrest of a defendant on *mesne* process, the sheriff's officer may not carry him to gaol within twenty-four hours from the time of such arrest, under a penalty of £50, unless the defendant refuse to be carried in the meantime, to some safe and convenient dwelling house in the county, to be named by him, not being his own house: 32 Geo. II. c. 28 ss. 2 and 12; Arch. Pr. 13th ed. 707. It is the duty of the officer to request the defendant to name such house, before he can take him to gaol within the twenty-four hours: *Deuchirst v. Pearson*, 1 Dowl. P. C. 664; 1 C. & M. 365; *Simpson v. Renton*, 5 B. & Ad. 35, and see *Gordon v. Laurie*, 9 Q. B. 60; 18 L. J. Q. B. 98. The defendant is entitled to be discharged on giving bail to the sheriff, and on payment of the sheriff's fees including the costs of the bond. The sheriff may take a bond with one surety,

Bail to sheriff. Defendant arrested on *mesne* process not to be confined to gaol within 24 hours.

Defendant to be discharged on giving bail to sheriff.

U. W. O. LAW

**Form of bond.**—one surety sufficient, but sheriff should require two.

but it is strictly his duty not to accept a bond with less than two sureties. The bond must be executed and taken on or before the tenth day limited by the writ for appearance. The sheriff is to take bail for the sum indorsed on the writ, and no more; 12 Geo. I. c. 29 s. 2; in practice the penalty is usually double the sum sworn to. The security to the sheriff must be by bond, otherwise it is void, 23 H. VI. c. 9 ss. 7, 8; 10 Co. 101; *Lewis v. Knight*, 8 Bing. 271; 1 M. & Sc. 353; 1 Dowl. P. C. 261. The bond must be to the sheriff himself by the name of his office, and upon condition written, that the defendant shall appear at the day contained in the writ, or warrant, and in such place as the writ, or warrant, shall require; 23 H. VI. c. 9 s. 7, otherwise it shall be void; *Id.* s. 8. If the bond be executed before the condition is filled up it will be void; *Powell v. Duff*, 3 Camp. 181.

Bail to sheriff,  
when forfeited.

The bond is forfeited if the defendant do not put in bail to the action, or as it is called 'bail above,' or 'special bail,' within ten days after his arrest; or if special bail be put in within that time, then by his not perfecting them in due time. When in consequence of the forfeiture of the bail bond to the sheriff an action is brought thereon, upon an assignment thereof by the sheriff, or proceedings are taken, against the sheriff; upon an application to stay such action or proceedings in order that the case may be tried on the merits against the original defendant, it is in the power of the Court, or Judge, to direct the bail bond to the sheriff to stand as security to the plaintiff should he succeed in establishing his claim against the defendant on the merits, and it is to cases in which such a direction has been given that *Rule 68* applies.

This *Rule* appears to be in force still, and to apply to all the Divisions of the High Court.

proceedings on bail bond may be stayed on payment of costs in one action

**69.** Proceedings on the bail bond may be stayed on payment of costs in one action, unless sufficient reason be shewn for proceeding in more.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court. After verdict in more than one action on a bail bond, an application to stay proceedings under this *Rule* on payment of costs in one action only is too late: *Johnson v. Macdonald*, 2 Bowl. 44; see En. R. 85.

Plaintiff may except to bail to sheriff who becomes bail to an action, though he has taken assignment of bail bond.

**70.** When bail to the sheriff becomes bail to the action, the plaintiff may except to them, though he has taken an assignment of the bail bond.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court. "Bail to the action" is another term for

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special bail, if the defendant costs and come the sheriff of has been brought s. 40; and see *et seq.*

**71.** A plea on the bail of the defendant

This *Rule* applies to the High Court

**72.** No return of attachment not bringing regularly compensation, unless made on the basis of an affidavit by the sheriff, bail, or on an affidavit by the officers of the town and truly made on their own expense, without collusion.

This *Rule* appears  
of the High Court

**73.** When the return of a writ of habeas corpus is granted for a defendant who has been held in special bail at the discretion of the court, the rule is:

This Rule applies to the execution of the writ before, or before the writ is returned, *v. Lieven*, 4. M. & C. 100.

special bail. Special bail are persons who undertake generally that if the defendant be condemned in the action he shall satisfy the costs and condemnation money, or render himself to the custody of the sheriff of the county in which the action against such defendant has been brought, or that they will do so for him: *R. S. O. c. 50, s. 40*; and see further as to Bail: *Har. C. L. P. Act*, 2nd ed., p. 34 *et seq.*

**71.** A plaintiff shall not be at liberty to proceed on the bail bond, pending a rule to bring in the body of the defendant.

Plaintiff cannot proceed against bail, pending rule to bring in body.

This *Rule* appears to be still in force, and applies to all Divisions of the High Court. See *En. R. 87*.

**72.** No rule shall be drawn up for setting aside an attachment regularly obtained against a sheriff for not bringing in the body, or for staying proceedings regularly commenced on the assignment of any bail bond, unless the application for such rule shall, if made on the part of the original defendant, be grounded on an affidavit of merits, or if made on the part of the sheriff, bail, or any officer of the sheriff, be grounded on an affidavit shewing that such application is really and truly made on the part of the sheriff, or bail, or officers of the sheriff, as the case may be, at his or their own expense, and for his or their indemnity only, and without collusion with the original defendant.

Application to set aside attachment against sheriff for not bringing in body, or to stay proceedings against bail, to be founded on affidavit of merits, &c.

This *Rule* appears to be still in force, and applies to all Divisions of the High Court. See *En. R. 88*.

**73.** Whenever a plaintiff shall rule the sheriff, on a return of *cepi corpus* to bring in the body, the defendant shall be at liberty to put in and perfect special bail at any time before the expiration of such rule.

Special bail may be put in at any time before return of rule to bring in body.

This *Rule* appears to be still in force, and applies to all Divisions of the High Court. The sheriff may be ruled immediately after the execution of the writ: *Hodgson v. Mee*, 5 N. & M. 302; but not before, or before the time for putting in bail has expired: *Ponchee v. Lieven*, 4 M. & S. 427; *Hutchins v. Hird*, 5 T. R. 479; *Potter*

Where sheriff may be ruled.

U. W. O. LAW

*v. Marsden*, 8 East. 525. Nor can it issue after judgment has been recovered against the sheriff for an escape, nor when the defendant has been released by order of the plaintiffs: *Borwick v. Walton*, 2 B. & Al. 623; where the plaintiff has taken an assignment of the bail bond: 2 Saund. 60 b., provided it be a valid one; nor where he accepts a *cognovit* or other security from the defendant, without the privity of the sheriff: *Rex v. Sheriff of Surrey in Brewer v. Clarke*, 1 Taunt. 159; Arch. Pr. 13th ed.: see En. R. 89. The rule should be issued, and served promptly: *Rex v. Sheriff of Middlesex*, 1. Dowl. 53. The rule may issue on *precipe* without motion: see *Rule 102 post*.

Rule may issue in vacation requiring sheriff to bring body into Court.

**74.** In case a rule for returning a writ of *capias*, shall expire in vacation, and the Sheriff or other officer having the return of such writ, shall return *cepi corpus* thereon, a rule may thereupon issue requiring the Sheriff or other officer within the like number of days after the service of such rule, as by the practice of the Court, is prescribed with respect to rules to bring in the body issued in term, to bring the defendant into Court, by forthwith putting in and perfecting bail above to the action, and if the Sheriff or other officer shall not duly obey such rule, an attachment shall issue in the following term, for disobedience of such rule, whether bail shall, or shall not, have been put in and perfected in the meantime.

Attachment may issue for disobedience.

Order for issue of attachment is now necessary.

This *Rule* appears to be still in force and to apply to all the Divisions of the High Court, except the concluding clause as to the issue of an attachment against the sheriff, or other officer, which is now obsolete; under the present procedure an attachment cannot issue in any case without an order therefor, to be applied for on notice to the party against whom it is to be issued: *Rule S. C. 365*, *Holmsted's Man. Pr.* 150; *Jupp v. Cooper*, 5 C. P. D. 26. It will be noticed that the rule prescribed by this *Rule* is one "to bring the defendant into Court, by forthwith putting in and perfecting bail above to the action," i. e., special bail.

Notice of more than two bail, irregular.

**75.** Notice of more bail than two shall be deemed irregular, unless by order of the Court or of a Judge.

This *Rule* appears to be still in force and to apply to all the Divisions of the High Court, it refers to special bail. See En. R. 91.

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Where the amount is large a Judge may allow several to become bail in different amounts: *Anon*, 13 Price 448; *Easter v. Edwards*, 1 Dowl. 39.

More than two bail when allowed.

**76.** The bail of whom notice shall be given, shall not be changed without leave of the Court or a Judge.

Bail not to be changed without leave.

This *Rule* appears to be still in force and to apply to all the Divisions of the High Court. See E. R. 92.

**77.** No person or persons shall be permitted to justify himself or themselves as good and sufficient bail for any defendant or defendants, if such person or persons shall have been indemnified for so doing by the attorney or attorneys concerned for any such defendant or defendants.

Bail who have been indemnified by attorney of defendant cannot justify.

This *Rule* appears to be still in force and to apply to all the Divisions of the High Court. See E. R. 63. But when a judgment was set aside on the terms of the defendant giving security for the amount thereof to the satisfaction of the Registrar, it was held to be no objection to the sureties that they had been indemnified by the defendant's solicitor; *Shanly v. Grand Junction, R. W. Co.*, Divisional Court, Q. B. D., Easter Sittings, 1882 *ex. rel. A. B. Aylesworth*.

**78.** No attorney shall take any recognizance of bail in a case in which he is employed as attorney or agent for either party.

Attorney for either party cannot take recognizance.

This *Rule* appears to be still in force and to apply to all Divisions of the High Court, and see *Rule* 114, *post*.

**79.** If any person put in as bail to the action, except for the purpose of rendering only, be a practising attorney, or clerk to a practising attorney or sheriff's officer, bailiff, or person concerned in the execution of process, the plaintiff may treat the bail as a nullity, and sue upon the bail bond as soon as the time for putting in bail has expired, unless good bail be duly put in in the meantime.

Attorney, sheriff's officer, or bailiff cannot be bail, except for purpose of rendering.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court. After the return day of the writ, where special bail have not already been put in, and where bail to the

sheriff are desirous of rendering their principal, special bail must be put in before the render can be made: *Harrison v. Davies*, 5 Bur. 2683. It is bail put in under such circumstances, which is bail for the purpose of rendering only, referred to in this Rule. See En. R. 94.

Bail put in, in the country, how to be justified in Court.

**80.** When bail which has been put in, in the country, is to be justified in Court, the bail piece, with the affidavit of the due taking thereof, and the affidavit of justification, shall be transmitted by the deputy clerk of the Crown for the county in which they have been filed to the principal office in Toronto, to be filed and produced in Court, upon the motion for allowance, on proper notice being given to such deputy clerk to transmit the same.

This Rule appears to be still in force, and to apply to all Divisions of the High Court: see *R. S. O.* c. 50, s. 41.

A rule for allowance was refused, where, after justification, one of the bail had absconded: *Billings v. Loucks*, 3 O. S. 78, and where the notice to the plaintiff stated that special bail had been put in but the recognizance produced was only for the limits, an application for allowance was refused: *Clegg v. McNab*, 1 P. R. 150.

If notice of bail be accompanied by affidavit of justification, costs of justification how borne.

**81.** If the notice of bail shall be accompanied by an affidavit of each of the bail, according to the following form, and the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification; and if such bail are rejected, the defendant shall pay the costs of opposition, unless the Court, or a Judge thereof, shall otherwise order:

*Form of Affidavit of Justification of Bail.*

In the ———

Between A. B., Plaintiff, }  
and  
C. D., defendant. }

Form of affidavit of justification

B. B., one of the bail for the above-named defendant, maketh oath and saith, that he is a house-keeper, (or freeholder, *as the case may be*,) residing at *(give par-*

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*ticular description of the place of residence,) that he is worth property to the amount of £— (double the amount sworn to) over and above what will pay all his just debts, (if bail in any other action add, and every other sum for which he is now bail,) that he is not bail for any defendant, except in this action, (or if bail in any other action or actions, add, except for C. D., at the suit of E. F., in the Court of — in the sum of £ , for G. H., at the suit of J. K., in the Court of in the suit of £ —, specifying the several actions with the Courts in which they are brought, and the sums in which the deponent is bail.) Sworn, (&c., as usual.)*

This Rule appears to be still in force, and to apply to all the Divisions of the High Court. See En. R. 98.

It will be observed, however, that the form of affidavit prescribed is drawn in the third person instead of the first, as required by Rule 112, *post*, and Rule S. C. 464. See below Rule 84. The names of all the deponents must be mentioned in the jurat, Rule S. C. 466.

Whether affidavit should be drawn in third person, *quare*.

The affidavit of justification cannot be sworn before the defendant's attorney: *Koyle v. Wilson*, 2 O. S. 113; Rule 114, *post*.

**82.** If the plaintiff shall not give one day's notice of exception to the bail by whom such affidavit shall have been made, the recognizance of such bail may be taken out of Court without other justification than such affidavit.

Notice of exception to bail, when to be served

This Rule appears to be still in force, and to apply to all Divisions of the High Court. See En. R. 99.

The notice referred to in the Rule should be given at least one day before the time for putting in bail expires.

**83.** Where notice of bail shall not be accompanied by such affidavit, the plaintiff may except thereto within twenty days next after the putting in of such bail, and notice thereof given in writing to the plaintiff or his attorney, or where special bail is put in before any commissioner, the plaintiff may except

When notice of bail not accompanied by affidavit of justification, plaintiff has 20 days to except.



thereto within twenty days next after the bail piece is filed in the proper office, and notice thereof given as aforesaid, and no exception to bail shall be admitted after the time hereinbefore limited.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court. See En. R. 100.

The affidavit referred to in this *Rule* is the affidavit of justification prescribed by *Rule* 81.

Affidavits of justification form of

**84.** Affidavits of justification shall be deemed insufficient, unless they state that each person justifying is worth double the amount sworn to over and above what will pay his just debts, and over and above every other sum for which he is then bail, except when the sum sworn to exceeds one thousand pounds, when it shall be sufficient for the bail to justify in one thousand pounds beyond the sum sworn to.

This *Rule* is still in force, and applies to all the Divisions of the High Court. See En. R. 101; and see *Rule* 75 *ante*. Where the affidavit is insufficient the bail may justify in person; *Shave v. Spode*, 2 M. & W. 42, but the defendant will not in that case be entitled to the costs of justification; *Stevens v. Miller*, *Ib.* 368; and see *Rule* 83.

'Two days' notice of justification is sufficient.

**85.** It shall be sufficient in all cases if notice of justification of bail be given two days before the time of justification.

This *Rule* appears to be still in force, and to apply to all Divisions of the High Court. See En. R. 102.

Bail to action to justify within 4 days after exception.

**86.** In all cases, bail to the action shall be justified, when required, within four days after exception, before a Judge at Chambers, both in term and vacation.

This *Rule* appears to be still in force, and to apply to all Divisions of the High Court. See En. R. 103.

Bail, though rejected, may render their principal.

**87.** Bail, though rejected, shall be allowed to render the principal without entering into a fresh recognizance.

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This *Rule* appears to be still in force, and to apply to all Divisions of the High Court. See En. R. 104.

**88.** When the plaintiff proceeds by action on the recognizance of bail, the bail shall be at liberty to render their principal at any time within the space of eight days next after the service of the process upon them, but not at any later period, and upon notice thereof given, the proceedings shall be stayed upon payment of the costs of the writ and service thereof only.

When action commenced against bail, they may, within 8 days after service of writ, render their principal, and thereupon proceedings may be stayed.

This *Rule* appears to be still in force, and to apply to all Divisions of the High Court, but see *Rule S. C.* 428. See En. R. 108.

Where after due notice of render, plaintiff proceeded to judgment, the proceedings were stayed, and the costs incurred subsequent to notice, disallowed: *Wright v. Tucker*, 6 U. C. Q. B. 24. The Court will not interfere to stay proceedings where the render is made after the time limited by this *Rule*: *Read v. Scovell*, 16 U. C. Q. B. 453. Where there is doubt as to the validity of an alleged render of the principal, a Judge in Chambers will not order an *amercement*, but will leave the bail to plead: *Blackman O'Gorman*, 5 U. C. L. J. 161; *Potts v. Baird*, 7 P. R. 113.

Plaintiff proceeding after notice of render not entitled to costs subsequently incurred.

Proceedings not stayed, if validity of render questioned.

**89.** Bail shall only be liable to the sum sworn to by the affidavit of debt, and the costs of suit, not exceeding in the whole, the amount of their recognizance.

Bail, extent of liability of.

This *Rule* appears to be still in force, and to apply to all Divisions of the High Court. See En. R. 109.

**90.** To entitle bail to a stay of proceedings, pending a writ of error or appeal, the application must be made before the time to surrender is out.

Staying proceedings pending appeal.

This *Rule* appears to be still in force, and to apply to all Divisions of the High Court. See En. R. 110.

**91.** Whenever two or more notices of justification of bail shall have been given before the notice on which bail shall appear to justify, no bail shall be permitted to justify without first paying (or securing to the satisfaction of the plaintiff, his attorney, or agent) the reasonable costs incurred by such prior

Costs of prior notices of bail.

U. W. O. LAW

notices, although the names of the parties intended to justify, or some of them, may not have been changed, and whether the bail mentioned in any such prior notice shall not have appeared, or shall have been rejected.

It is doubtful whether this *Rule* is not now superseded by *Rule S. C. 428* making the costs of all proceedings in the discretion of the Court. See *En. R. 111*.

#### EJECTMENT.

In actions to recover land, Judge's order necessary to sign judgment where writ not personally served.

**92.** No judgment in ejectment for want of appearance or defence, whether limited or otherwise, shall be signed without first filing an affidavit of the service of the writ, according to the Common Law Procedure Act, 1856, together with the writ or a copy thereof (a), where there is a limited defence, or where personal service has not been effected, without first obtaining a Judge's order, or a rule of Court authorizing the signing such judgment, which said rule or order, or a duplicate thereof, shall be filed together with the writ.

Where the writ in an action to recover land is served by posting a copy upon the door of the dwelling-house, or other conspicuous part of the property: see *Rule S. C. 43*, there the latter part of this *Rule 92* appears to apply, and an order to enter judgment is necessary: see *Maclellan*, 2nd. ed., 188: see also *Rules S. C. 16, 77, 209, 210*.

Rules 93-94 not in force.

**Rule 93** provided that where a person named in the writ, in ejectment has obtained leave of the Court, or a Judge, to appear and defend, he shall enter an appearance according to the Common Law Procedure Act, 1856, entitled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's attorney or to the plaintiff, if he sues in person: its provisions are now superseded by *Rules S. C. 62, 63, 64, 65*.

**Rule 94** provided that if the plaintiff in ejectment appears at the trial, and the defendant does not appear, the defendant shall be taken to have admitted the plaintiff's title, and the verdict shall be entered for the plaintiff without producing any evidence, and the

(a) The wording of the *Rule* appears defective, the word "and" or "or," appears to be wanting here.

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plaintiff shall have judgment for his costs of suit as in other cases : its provisions are now superseded by *Rule S. C. 268, J. A. s. 44* ; and see *Rule S. C. 148*.

#### PENAL ACTIONS, COMPOUNDING OF.

**95.** Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall have been given to the proper officer, but in other cases it may.

Leave to compound penal actions not to be granted without notice to Attorney-General.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court. See *En. R. 118*.

By 18 Eliz. c. 5, s. 3, no penal action, by a common informer, can be compromised without the leave of the Court. This Statute is in force in this Province : *Blocker v. Myers*, 6 U. C. Q. B. 134.

Where the Crown is concerned, the consent of the Attorney General must be procured : *Howard v. Sowerby*, 1 Taunt. 103. Leave is not necessary in actions by the party *agere* : vide *Kirkham v. Wheeler*, 1 Salk 30. It is entirely in the discretion of the Court to grant it, or not : *Maughan v. Walker*, 5 T. R. 98 ; *Sheldon v. Mumford*, 5 Taunt. 268. Where the sum offered is so small as to indicate collusion, leave will be refused : *Wood v. Chess*, 2 W. Bl. 1157. Leave will not be granted until after the statement of defence : *Rex v. Collier*, 2 Dowl. 481, and see *Rex v. Crisp*, 1 B. & Al. 282.

Leave when granted.

Leave was given to compromise a penal action brought under 32 Hen. VIII, c. 8, for buying pretended titles, on paying the Crown's share into Court : *Magp. t. v. Dutton*, 5 Q. S. 77.

A promise founded on the compromise of a penal action without the leave of the Court is void : *Hart v. Myers*, 7 U. C. Q. B. 416.

The provision of 32 Vict. c. 32 (40), regulating tavern and shop licences, and forbidding the compromise of offences under the Act, and imposing a punishment of imprisonment for three months in the common jail on any party who should be a party to such compromise, was held not to be ultra vires of the Provincial Legislature : *Regent v. Boardman*, 30 U. C. Q. B. 553. An action for a penalty imposed by a statute cannot be brought by a common informer unless the statute imposing the penalty so provides either expressly, or by implication : *Bradlaugh v. Clarke*, 3 App. Cas. 637 ; 48 L. T. N. S. 681 ; 52 L. J. Q. B. 505.

Where action by informer will lie.

Where the statute does not authorize an action by a common informer, the penalty can only be recovered in a proceeding at the suit of the Crown : *Id.* ; but see *Shrigley v. Taylor*, 4 O. R. 396.

The Court refused to set aside a judgment of *non pros* regularly signed in a penal action : *McClenigan v. McLeod*, 8 U. C. L. J. 233 ; 3 P. R. 13.

A plaintiff may be non-suited in a *qui tam* action: *Ramsay v. Jones*, 21 U. C. Q. B. 370.

Rule for compounding penal action, form of.

**96.** The rule for compounding any *qui tam* action shall express therein that the defendant thereby undertakes to pay the sum for which the Court has given him leave to compound such action.

This Rule appears to be still in force in all the Divisions of the High Court. See En. R. 120. The payment of such sum might formerly be enforced by attachment; *Regina v. Clifton*, 5 T. R. 257; but see now *R. S. O. c. 67, s. 10*.

Queen's proportion of composition to be paid to Clerk of Crown.

**97.** When leave is given to compound a penal action, the Queen's proportion of the composition shall be paid into the hands of the Clerk of the Crown of the Court granting such leave, for the use of Her Majesty.

This Rule appears to be still in force in all the Divisions of the High Court. See En. R. 120; *Brown v. Bailey*, 4 Burr. 1929.

#### PRISONERS, AND PROCEEDINGS AGAINST THEM.

Rule for discharge of defendant out of custody, to direct *supersedeas* to issue.

**98.** Every rule or order of a Judge directing the discharge of a defendant out of custody, upon special bail being put in and perfected, shall also direct a *supersedeas* to issue forthwith.

This Rule is still in force, and applies to all the Divisions of the High Court. See En. R. 124; *Har. C. L. P. Act*, 2nd ed., 35.

Time for proceeding to trial when defendant in custody.

**99.** The plaintiff shall proceed to trial or final judgment against a prisoner in the term next after issue is joined, or at the sittings, or assizes, next after such term, unless the Court or a Judge shall otherwise order, and shall cause the defendant to be charged in execution within the term next after such trial, or judgment.

This Rule would seem to be still in force, terms though abolished still exist as a measure of time: see *J. A. s. 18*. The time for proceeding to trial in ordinary cases is now governed by *Rule S. C. 255*.

Where a defendant is ordered to be discharged because plaintiff has not charged him in execution in due time, he cannot be thereafter arrested on the same judgment: *Burn v. Straight*, 5 O. S. 523; and see *Wheatley v. Sharpe*, 8 P. R. 307; *Golding v. Mackie*, *Id.* 237.

See *Rob. & Jos. Digest*, 3060.

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**100** In all cases in which a defendant shall have been, or shall be, detained in prison on any writ of *capias*, or being arrested thereon, shall go to prison for want of bail, and in all cases in which he shall have been or shall be rendered to prison before declaration on any such process, the plaintiff in such process shall declare against such defendant before the end of the next term after such arrest or detainer, or render and notice thereof, otherwise such defendant shall be entitled to be discharged from such arrest or detainer, upon entering a common appearance, unless further time to declare shall have been given to such plaintiff by rule of Court or order of a Judge.

Time for delivering statement of claim when defendant in custody.

This Rule appears to be still in force. The time for delivery of a statement of claim in ordinary cases is now regulated by *Rule S. C.* 131, 150, 158. The object of this Rule is to hasten proceedings against prisoners: *Glenn v. Box*, 3 U. C. Q. B. 182; *R. S. O. c.* 50, s. 37; *Tyson v. McLean*, 1 P. R. 339; *Hamborg v. Salomon*, 3 U. C. L. J. 69; *Glennie v. Ross*, 3 P. R. 289; 10 U. C. L. J. 105. If the defendant be out on bail the Rule does not apply; *Glenn v. Box*, *supra*.

The pendency of proceedings to set aside the *capias*, and arrest was held to be no excuse for not declaring within the time limited; *Houtaling v. Cuttle*, 6 P. R. 251.

#### SHERIFFS' RULES TO RETURN WRITS, &c.

**101.** All rules upon sheriffs to return writs, or to bring in the bodies of defendants, shall be six day rules, and shall be issued from the same office whence the writ was sued out.

Rules to return writs, or bring in body, to be six day rules.

This Rule appears to be still in force, and will now doubtless be held applicable in all the Divisions of the High Court. The rule may be obtained on *præcipe*, see next Rule.

**102.** No Judge's order shall issue for the return of any writ, or to bring in the body of the defendant, but a side bar rule shall issue for that purpose in vacation as in term, which shall be of the same force and effect as side bar rules made for that purpose in term.

Rules for return of writs, &c., to be side bar rules.

This Rule is still in force, and applies to all the Divisions of the High Court. See En. R. 132.

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Sheriff to file writ in office from which rule to return issues.

**103.** The sheriff shall file the writ in the office from which the rule to return the same was issued, at the expiration of the rule, or as soon after as the office shall be open, and the officer with whom it is filed shall indorse the day and hour when it was filed.

This *Rule* is still in force, and applies to all the Divisions of the High Court.

Rule 104 not in force.

**Rule 104** provided that in case a rule to bring in the body of a defendant shall expire in vacation, having been duly served, but not having been obeyed, an attachment shall issue for disobedience of such rule, whether the rule shall or shall not have been obeyed in the meantime.

This *Rule* is now obsolete, an order for an attachment, to be obtained on notice, being now necessary in all cases: *Rule S. C.* 355; Holmsted's Manl. Pr. 150; *Jupp v. Cooper*, 5 C. P. D. 26.

Arrest by sheriff before going out of office: rule to bring in body.

**105.** Where any sheriff, before his going out of office, shall arrest any defendant, and take a bail bond and make a return of *cepi corpus*, he shall and may, within the time allowed by law, be called upon to bring in the body by a rule for that purpose, notwithstanding he may be out of office before such rule shall be granted.

This *Rule* is still in force, and applies to all the Divisions of the High Court.

#### IRREGULARITY.

Irregularity. motion to set aside proceedings for, to be made promptly.

**106.** No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

This *Rule* appears to be still in force, and applicable to all Divisions of the High Court. See En. R. 135, and see vol. I. pp. 149-150; *Kerr v. Bowie*, 3 U. C. L. J. 150; *Richmond v. Proctor*, *Ib.* 202.

If an objection can be waived, it amounts to an irregularity, if not, it is a nullity: *Bank of Upper Canada v. VanVoorth*, 4 U. C. L. J. 232. The tendency of the cases is to consider defects as irregularities, rather than nullities: *Herr v. Douglas*, 4 P. R. 102. A stranger cannot set aside proceedings for irregularity: *Ferrin v. Bowes*, 5

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U. C. L. J. Harris, 10 however, effect, fraud *v. Boulton*.

**107.** V. proceeding intended

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U. C. L. J. 138; *Balfour v. Ellison*, 8 U. C. L. J. 330; *McKenzie v. Harris*, 10 U. C. L. J. 213; *Nicholls v. Nicholls*, 3 P. R. 201 (see, however, *Bonistiel v. McMaster*, 6 O. S. 32); unless they are, in effect, fraudulent; *McDonald v. Boies*, 12 Gr. 48; and see *Martin v. Boulanger*, 8 L. R. App. 296.

**107.** Where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted on shall be stated therein.

Objections to be stated in summons.

This Rule is still in force and applicable to all the Divisions of the High Court. Motions are now made on notice, except applications before C. C. Judges, or Local Masters. A notice of motion should specify the irregularity complained of, but if it sufficiently appear in the affidavit filed in support of the motion and referred to in the notice as disclosing the grounds of the motion, that has been held sufficient: *Blain v. Blain*, 9 P. R. 269; see En. R. 136, and see vol. I, p. 149.

**108.** In all cases where a rule is obtained to show cause why proceedings should not be set aside for irregularity with costs, and such rule is afterwards discharged generally without any special directions upon the matter of costs, it is to be understood as discharged with costs.

Costs.

This Rule appears to be still in force. See Rule 8, C. 445.

#### AFFIDAVITS.

**Rule 109** provided that the addition and true place of abode of every person making an affidavit shall be inserted therein, and is now superseded by Rule 8, C. 465.

Rules 109--113 not in force.

**Rule 110** provided that in every affidavit made by two or more deponents, the names of the several persons making such affidavit shall be written in the jurat, and is now superseded by Rule 8, C. 466.

**Rule 111** provided that no affidavit shall be read or made use of in any matter depending in Court, in the jurat of which there shall be any interlineation or erasure, and is now superseded by Rule 8, C. 468.

**Rule 112** provided that "every affidavit, sworn within this Province, to be hereafter used in any cause or civil proceeding, shall be written in a plain legible hand, and shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a



distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially violating this rule; nor shall any affidavit violating this rule be used on any motion to obtain, or to show cause against a rule nisi, without the express permission of the Court." It appears to be now superseded by *Rule S. C.* 464, which however does not expressly require affidavits to be written in "a plain legible hand."

**Rule 113** provided that when any affidavit is sworn before any Judge, or any commissioner, by a person who from his or her signature appears to be illiterate, it shall be certified in the jurat that the affidavit was read in the presence of the party administering the same to the party making the same, and that such last mentioned party seemed perfectly to understand the same, and also wrote, or made, his or her signature, or mark, in the presence of the party administering the oath. It is now superseded by *Rule S. C.* 469.

No affidavit to be sworn before attorney of the party on whose behalf it is filed, except affidavits to hold to bail.

**114.** No affidavit shall be read or made use of for any purpose, if sworn before the attorney of the party in the cause on whose behalf such affidavit is made, or before the clerk, or partner, of such attorney; but this rule shall not extend to affidavits to hold to bail.

This *Rule* is still in force, and applies to all the Divisions of the High Court: see *Eng. R.* 137; *Duke of Northumberland v. Todd*, 7 Chy. D. 777; *Dunn v. McLean*, 6 P. R. 95; 9 C. L. J. 212, as to persons authorized to take affidavits in Ontario: see *R. S. O.* c. 63; 45 *Vict. c.* 11 sec. 1, (O); as to persons authorized to take affidavits abroad for use in Ontario: see *R. S. O.*, c. 62, s. 38.

*Rule 115* not in force.

**Rule 115** provided that an affidavit sworn before a Judge of either of the Courts shall be received in the Court to which such Judge belongs, though not entitled of that Court, but not in any other Court, unless entitled of the Court in which it is to be used, and is now obsolete.

Where special time limited for filing affidavits, affidavits filed subsequently not to be used.

**116.** Where a special time is limited for filing affidavits, no affidavit filed after that time shall be made use of in Court, or before the Master, unless by leave of the Court, or a Judge.

This *Rule* is still in force, and applies to all the Divisions of the High Court: see *En. R.* 143.

Rules founded on affidavit to be of no force, unless affidavit sworn before rule moved for.

**117.** No rule, which the Court has granted upon the foundation of any affidavit, shall be of any force unless such affidavit shall have been actually made,

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before such rule was moved for, and produced in Court at the time of making the motion.

This *Rule* is still in force, and applies to all Divisions of the High Court: see En. R. 146.

**118.** In all cases in which a defendant appears in person, and an application is made to the Judge of the proper County Court for any summons under the authority of the Common Law Procedure Act, 1856, which ought to be served on the defendant, the affidavit on which the plaintiff grounds his application shall, among other things, state that the defendant resides at some place within the jurisdiction of such County Court.

Applications to Judge of C. C.

This *Rule* would appear to be still in force, and to apply to all the Divisions of the High Court: see *Rules S. C.* 422-423; Holmsted's *Manl. Pr.* 213-214.

#### RULES, SUMMONSES, AND ORDERS.

**119.** Every rule of Court shall be dated the day of the month and year on which the same is drawn up, and need not specify any other time or date.

Rules to be dated the day they are drawn up.

This *Rule* is still in force, and applies to all the Divisions of the High Court: see En. R. 149.

**120.** All rules which by the English practice may be had as a matter of course upon signature of counsel at side bar, or are given by the Master, Clerk of the Papers, or Clerk of the Rules, in England, are to be given by the Clerks of the Crown and Pleas, or their deputies, in the same manner, and the same may issue on any day in term, or in vacation.

Rules which by English practice are granted, of course to be granted by Clerks of C. & P. in same manner

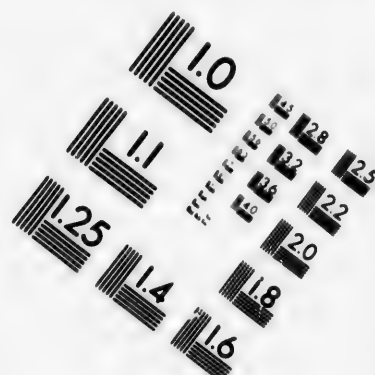
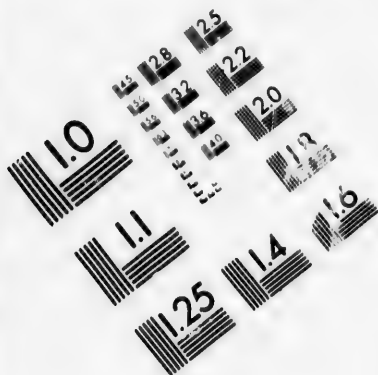
This *Rule* is still in force, and applies to all the Divisions of the High Court, &c., its provisions extend to Local Registrars, and Deputy Registrars, of the High Court, as well as the Deputy Clerks of the Crown, *Rule S. C.* 417.

**121.** A rule may be enlarged if the Court think fit, without notice.

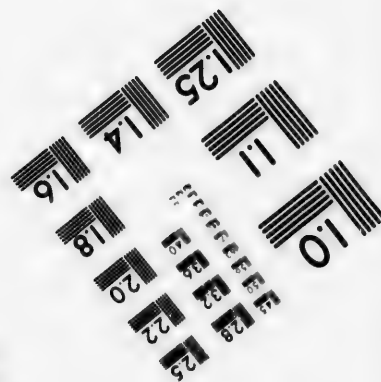
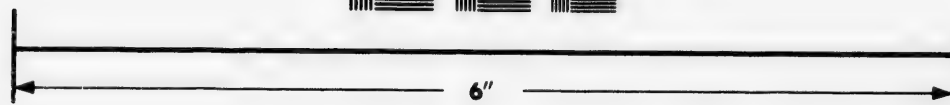
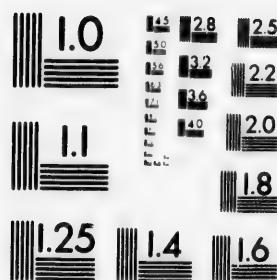
Rule may be enlarged without notice

This *Rule* is still in force and applies to all the Divisions of the High Court. See En. R. 151.

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Enlarged rules to be returnable the first day of ensuing term.

**122.** All enlarged rules shall be drawn up for the first day in the ensuing term, unless otherwise ordered by the Court.

It is doubtful how far this *Rule* is now in force, terms having been abolished. In cases which have been entered on the general list of causes, it is no longer necessary to issue enlarged rules: see *Rule* 2 of 1st Dec. 1875, *post* p. 575.

*Rule* 123 not in force.

**Rule 123** provided that it shall not be necessary to issue more than one summons for attendance before a Judge upon the same matter, and the party taking out such summons shall be entitled to an order on the return thereof, unless cause is shewn to the contrary, and is now obsolete, the present procedure being a notice of motion in lieu of a summons: see *Rule* 8, C. 405.

Half an hour's attendance on a summons, or appointment, is sufficient.

**124.** An attendance on a summons, or on an appointment before a Master, for less than an hour next immediately following the return thereof, shall be deemed a sufficient attendance.

This *Rule* appears to be still in force, and to apply to all the Divisions of the High Court. See En. R. 154.

The same practice prevails as regards attendances before the Taxing Officers, and on motions in Chambers.

Consents to judgments to be filed.

**125** All written consents, upon which orders for signing judgments are obtained, shall be filed and preserved by the clerk of the Judge's Chambers.

This *Rule* appears to be still in force, and applies to all the Divisions of the High Court. See En. R. 155.

One partner cannot consent to judgment against co-partner.

One partner has no implied authority to consent to an order for judgment in an action against himself and his co-partner: *Hamberidge v. De la Croune*, 3 C. B. 742.

When defendant appears by attorney, consent of attorney necessary.

**126.** In actions in which the defendant has appeared by attorney, no such order shall be made unless the consent of defendant be given by his attorney or agent.

This *Rule* is still in force, and applies to all the Divisions of the High Court. See En. R. 156.

Where a defendant has appeared by solicitor, it is irregular for such party, so long as the solicitor continues on the record, to act in person: *Yeatman v. Snow*, 42 L. T. N. S. 402.

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NOTICES —

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*Co. v. Shaw*,

**127.** Where the defendant has not appeared, or has appeared in person, no such order shall be made, unless the defendant attends the Judge and gives his consent in person, or unless his written consent be attested by an attorney acting on his behalf, unless the defendant is a barrister or attorney.

When defendant has not appeared, or appears in person, consent to judgment how given.

This *Rule* appears to be still in force, and applicable to all the Divisions of the High Court. See En. R. 157.

**Rule 128** provided that where a Judge's order is made during vacation it shall not be made a rule of Court before the next term unless in any case otherwise provided for by statute, and appears to be obsolete: see *Rule S. C.* 357. It is no longer necessary to make a Judge's order a rule of Court: Arch. Q. B. Pr. 2930; *Salm Kyrburg v. Posnanski*, 13 Q. B. D., 211. An action will now lie on a Judge's order: *Philpott v. Lechin*, 35 L. T. N. S. 855; 20 So. J. 605; and a Judge's order may be now enforced by attachment, which a Judge in Chambers may order to issue, *Salm Kyrburg v. Posnanski*, *supra*.

Rules 128-130 not in force.

**Rule 129** provided that when a Judge's order, or order of *nisi* *provis* is made a rule of Court, it shall be a part of the rule that the costs of making the order a rule of Court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party, his attorney or agent, and disobeyed, and appears to be obsolete: see *Rule S. C.* 357.

**Rule 130** provided that rules to shew cause shall be no stay of proceedings unless two days' notice of the motion shall have been served on the opposite party, except in the cases of rules for new trials, or to enter verdict, or non-suit, motion in arrest of judgment, or for judgment *non obstante veredicto*, or to set aside an award, or to enter a suggestion, or by the special direction of the Court. It appears to be now obsolete.

Rules *nisi* are now abolished in all cases, except on motions for new trials in cases tried by a jury, and on motions to quash by-laws see *Rules S. C.* 405, 308, 313.

Notices to be in writing

#### NOTICES—SERVICE OF, AND OF RULES, PLEADINGS, &c.

**131.** All notices required by these rules, or by the practice of the Court, shall be in writing.

Notices to be in writing.

This *Rule* is still in force: see also *Rule S. C.* 451.

A verbal notice to produce was held insufficient: *Provincial Ins. Co. v. Shaw*, 19 U. C. Q. B. 537.

U.W.O. LAW

Rules 132-133  
not in force.

**Rule 132** provided that a copy of every declaration, and subsequent pleading, shall be served upon the opposite party, whether the case be bailable or not bailable, and whether the action be against any person having privilege or otherwise, and as well where the plaintiff has entered an appearance for the defendant, as where the defendant has appeared in person, or by attorney. It is superseded by *Rules S. C.* 150, 131 : see *Holmsted's Manl. Pr.* 92.

**Rule 133** provided that where the residence of a defendant is unknown, pleadings, rules, notices, and other proceedings may be stuck up in the proper office, but not without previous leave of the Court or of a Judge. It is now superseded by *Rules S. C.* 19, 54, 131 : see *Holmsted's Manl. Pr.* 92.

Original rule, or  
order, need not  
be shown unless  
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in cases of at-  
tachment.

**134.** It shall not be necessary to the regular service of a rule or order, that the original rule or order shall be shown, unless sight thereof be demanded, except in cases of attachment.

This *Rule* appears to be still in force and applicable to all Divisions of the High Court : see *En. R.* 163 ; *Imperial Bank v. Dieckey*, 8 P. R. 246.

Rule 135 not in  
force.

**Rule 135** related to the time for service of pleadings, notices, summonses, orders, rules, and other proceedings, and is now superseded by *Rule S. C.* 159.

Book to be kept  
by Clerks of C. &  
P., in which ad-  
dresses of solicitors  
practising in  
Toronto to be  
entered.

**136.** A book shall be kept by the Clerk of the Crown of each of the Courts in Toronto, at his office, to be there inspected by any attorney or his clerk without fee or reward ; and every attorney practising in the said Courts and residing within the city of Toronto or the liberties thereof, or having an office and carrying on his business within the said city, shall enter in such book (in alphabetical order) his name and place of business or some other proper place within the city where he may be served with pleadings, notices, summonses, orders, rules, and other proceedings ; and as often as any such attorney shall change his place of business or the place where he may be so served as aforesaid, he shall make the like entry thereof in the said book ; and all pleadings, notices, summonses, orders, rules, and other proceedings which do not require a personal

Change of resi-  
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service shall be deemed sufficiently served on such attorney, if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place; and if any such attorney shall neglect to make such entry, the fixing up of any notice or of the copy of any pleadings, notice, summons, order, rule, or other proceedings for such attorney in the office aforesaid shall be deemed a sufficient service.

Service how effected, where attorney's address not entered in book

This *Rule* appears to be still in force: see *Chy. Ord.* 24, 33, 42, 43 *ante* vol. 1.

Service of agent is considered as service on principal, and anything subsequently done, where proceedings are stayed, is irregular: *Patterson v. Attrill*, 4 U. C. Q. B. 395; and see *Withers v. Parker*, 5 H. & N. 725.

**137.** Every other attorney practising in the said Courts shall enter in the said book (in like alphabetical order) his name and place of business, and also in an opposite column the name of some attorney having an office and carrying on business in the city of Toronto as his agent; and all pleadings, notices, summonses, orders, rules and other proceedings which do not require a personal service, shall be deemed sufficiently served on such first mentioned attorney, if a copy thereof shall be served on his booked agent in manner mentioned in the next preceding rule. And if any such attorney shall neglect to make the entry in this rule mentioned, the fixing up of any notice, or of the copy of any pleading, notice, summons, order, rule, or other proceeding, for such attorney in the Crown office at Toronto, shall be deemed a sufficient service. And as often as any such attorney shall change his place of business or his agent, he shall make an entry in the said books of such change, which last entry shall supersede all former ones. Provided always that in all cases service on the attorney at his office or usual place

Book to be kept by Clerks of C. & P., in which names and addresses of Toronto agents to be entered

Neglect to make entry, effect of.

Change of Agent to be entered.

U. W. O. LAW



of business in the manner mentioned in the next preceding rule, instead of on the booked agent, shall be deemed good service.

This *Rule* appears to be still in force : see *Chy. Ord.* 24, 42, 43.

Rule 138 not in force.

**Rule 138** provided that a party suing or defending in person, shall, upon issuing any writ of summons, or other proceeding, or entering an appearance, leave a memorandum with the clerk, or deputy clerk, of the Crown, stating an address at which all pleadings, notices, summonses, orders, rules, or other proceedings not requiring personal service, might be left, &c. It is now superseded by *Rules S. C.* 19, 53, 54.

Where after a party has acted in person, notice is given by an attorney that he is authorized to act, all subsequent proceedings, &c., to be served on attorney.

**139.** In all cases where a plaintiff shall have sued out a writ in person, or a defendant shall have appeared in person, and either party shall, by an attorney of the Court, have given notice in writing to the opposite party, or the attorney or agent of such party, of such attorney being authorized to act as attorney for the party on whose behalf such notice is given, all pleadings, notices, summonses, orders, rules, and other proceedings, which according to the practice of the Courts are to be delivered to, or served upon, the party on whose behalf such notice is given, shall thereafter be delivered to, or served upon, such attorney.

This *Rule* appears to be still in force, and applicable to all the Divisions of the High Court : see *En. R.* 167. In the Chancery Division it has been customary where a party, who has been previously acting in person, desires to act by solicitor, to obtain an order of course authorizing him to do so.

Notwithstanding this *Rule*, notice of motion to attach a defendant must usually be served personally, unless some sufficient reason is shown for dispensing with personal service : *Mann v. Perry*, 50 *L. J. Chy.* 251 ; followed by *Proudfoot, J.*, in *Smith v. Martin*, Sept. 29th, 1884. But notice of motion to commit for non-production, or not bringing in accounts, in the office of the Master, or Clerk of Records and Writs, or Deputy or Local Registrars, may be served on the solicitor : *Chy. Ord.* 296, and see *Rule S. C.* 237.

#### ATTACHMENT.

Rule 140 not in force.

**Rule 140** provided that rules for attachment shall be absolute in the first instance in the two following cases only : 1st for non-payment

of costs on a rule obeying a rule obsolete. No rule applied for, or issued : *Rule* cannot now be

**141.** Where, aside an avowry to be insisted in such rule a cause.

It doubtful are now abolished and motions to be stated in

**142.** Cost time for motion

This *Rule* is High Court :

**Rule 143** r execution, app sec, 300 for the having been re c. 67, ss. 16-20

CLERKS

**144.** On Deputy Clerk same shall without wa such Clerk, appointment

This *Rule* is High Court : s before proceed 124 ante, p. 52

of costs on a master's *allocatur*; and 2nd, against a sheriff for not obeying a rule to return a writ, or bring in the body. It is now obsolete. No attachment can be issued without an order, to be applied for, on notice to the party against whom the writ is to be issued: *Rule S. C.* 365. An attachment for non-payment of money cannot now be granted: *R. S. O.* c. 67, s. 10.

## AWARDS.

**141.** Where a rule to shew cause is obtained to set aside an award, the several objections thereto, intended to be insisted upon at the time of moving to make such rule absolute, shall be stated in the rule to shew cause.

On motions to set aside awards, grounds to be specified.

It doubtful how far this *Rule* is still in force; rules to shew cause are now abolished, except on motions for new trials in jury cases, and motions to quash by-laws. The objections, however, should now be stated in the notice of motion.

**142.** Costs may be taxed on an award, although the time for moving to set aside the award has not elapsed.

Costs may be taxed on an award, though time for moving against it has not elapsed

This *Rule* is still in force and applies to all the Divisions of the High Court: see En. R. 170.

## INSOLVENT DEBTORS

**Rule 143** related to affidavits by debtors in close custody in execution, applying under the Common Law Procedure Act, 1856, sec. 300 for their discharge from custody, and is now effete; sec. 300 having been repealed by 22 Vic. c. 96, s. 22; and see now R. S. O. c. 67, ss. 16-28.

Rule 143, obsolete.

## CLERKS AND DEPUTY-CLERKS OF THE CROWN.

**144.** On every appointment made by the Clerks or Deputy Clerks of the Crown, the party on whom the same shall be served shall attend such appointment without waiting for a second, or in default thereof such Clerk, or Deputy, may proceed *ex parte* on the first appointment.

One appointment of the Clerk of Crown, or Deputy Clerks, sufficient.

This *Rule* is still in force, and applicable to all the Divisions of the High Court: see En. R. 172. Half an hour's grace is usually allowed before proceeding in the absence of the opposite party; and see *Rule 124 ante*, p. 526.

No business to be transacted except upon attendance of party, or his attorney, or the clerk or agent of attorney.

**145.** No business shall be transacted in any of the offices of the Courts, either in procuring or suing out process, or in entering judgments or taking any proceeding whatever in a cause, unless upon the personal attendance of the party on whose behalf such business is required to be transacted, or of the counsel or attorney of such party, or the clerk or agent of the attorney, or the clerk of the agent.

This *Rule* is still in force, and applicable to all the Divisions of the High Court, and its provisions would seem now to extend to Local Registrars, and Deputy Registrars, *Rule S. C.* 417.

Putting paper under door of office, or handing same to officer in street, irregular.

Putting an appearance under the door of the office of a Deputy Clerk of the Crown during office hours, or handing it to him in the street, was held not to be a due entry of the appearance: *Grey v. Stacey*, 10 U. C. L. J. 245; and see *Fralick v. Huffman*, 1 C. L. Ch. R. 80; *Campbell v. Madden*, Dra. 2.

But the Court refused to set aside a *fi. fa.* issued at the officer's house before office hours: *Rolker v. Fuller*, 10 U. C. Q. B. 477; and see *Hall v. Hunter*, 5 O. S. 705.

Defendant's attorney, when entitled to precedence.

Where a defendant's attorney is present at the opening of the office to enter an appearance, or file a statement of defence, and the plaintiff's attorney is present to sign judgment for default, the defendant's attorney is entitled to precedence: see *Fralick v. Huffman*, 1 C. L. Ch. R. 80.

Offices of Court not to be opened when appointed to be closed.

The offices of the Court should not be opened for business, on days on which they are appointed by statute, or rule of Court, to be closed, and proceedings taken therein on such days are irregular: *Trust and Loan Co. v. Dickson*, 2 C. L. J. N. S. 166; *Mumford v. Hitchcock*, 9 Jur. N. S. 1200.

Rule 146 rescinded.

**Rule 146** related to the office hours of the Clerks of the Crown and Pleas, and was rescinded by *Rule* of August 27, 1860; and see now *Rule S. C.* 545, *post*.

Clerks of Crown to prescribe width and length of paper, &c.

**147.** All rolls and records shall be upon parchment, or paper, of such width and length as the Clerks of the Crown shall prescribe by written notice, to be put up in some conspicuous place in their respective offices and in the offices of the several Deputy Clerks of the Crown, and none of these officers shall be bound to receive any roll or record not made up in conformity

to such exceed, four in and fold

This *Rule* Common P. 67, *ante* vol.

**148.** V required cause, to and seal such env office, and ope to the thereof (t same by be deliver of the Cr mitted to Judge.

This *Rule* Divisions of and Deputy

**Rule 149** brought in t

**150.** T *præcipe* to required f receiving law (a), or for the ar issue any action; a

(a) These P. Act, 1856 c 1

to such notice, and such rolls and records shall not exceed, when folded, fourteen inches in length and four in breadth, written upon at least a sheet of paper, and folded accordingly.

This *Rule* appears to be still in force, in the Queen's Bench and Common Pleas Divisions of the High Court; and see *Chy. Ord.* 66, 67, *ante* vol. 1, pp. 58-59.

**148.** Whenever a Deputy Clerk of the Crown is required to transmit any roll, record, or paper, in any cause, to the principal office in Toronto, he shall enclose and seal up the same in an envelope, and shall address such envelope to the Clerk of the Crown in the proper office, and he may thereupon deliver such sealed envelope to the attorney who has required the transmission thereof (taking a receipt from him), or may send the same by post, and in no case shall any original papers be delivered out of the custody of the Deputy Clerk of the Crown, except for the purpose of being transmitted to Toronto, unless by order of the Court, or a Judge.

Transmission of papers to Toronto by Local Officers

This *Rule* appears to be still in force, and applicable to all the Divisions of the High Court, and to extend to all Local Registrars, and Deputy Registrars; see *Rule S. C.* 417.

**Rule 149** related to fees payable on entering records in cases brought in the "inferior jurisdiction" and is now obsolete.

Rule 149 obsolete.

#### CLERK OF THE PROCESS.

**150.** The Clerk of the Process shall, on receiving a *præcipe* to be filed by him, issue any writ of summons required for the commencement of an action; and on receiving a *præcipe* with the affidavit of debt required by law (a), or a *præcipe* and affidavit with a Judge's order for the arrest of a party, to be also filed by him, shall issue any writ of *capias* for the commencement of an action; and on receiving a *præcipe*, affidavit, and a

Clerk of Process to issue writs for commencement of actions.

(a) These words referred to the power to issue a *ca re* under C. L. P. Act, 1856, s. 23, which was repealed by 22 Vict. c. 96, s. 22.

Judge's order, to be also filed by him, shall issue any writ of attachment against an absconding debtor.

This *Rule* is still in force. By *Rule S. C. 545a*, *post* p. 810, all writs for the commencement of actions in Toronto are to be issued by the Clerk of the Process.

*Rule 151, also  
etc.*

**Rule 151** provided for issuing writs alternately in the Queen's Bench, and Common Pleas, and is now superseded by *Rule S. C. 545a*, *post* p. 810.

*Other writs to be  
issued by Clerk  
of Process accord-  
ing to established  
practice*

**152.** All other writs required by the Common Law Procedure Act, 1856, to be issued by the Clerk of the Process to the parties or their attorneys, shall be issued according to the established practice.

This *Rule* is still in force, and applies to the Queen's Bench, and Common Pleas, Divisions, only.

*Clerk of Process,  
office hours of.*

**153.** The Clerk of the Process shall attend in his office at all times, when the Clerks of the Crown and Pleas are required to attend in their respective offices, and shall permit all necessary searches respecting writs so issued by him, and the affidavits and papers whereon such writs are grounded, and shall grant office copies of all such affidavits and papers on payment of the usual fees.

This *Rule* is still in force. The office hours are now regulated by *Rule S. C. 545*.

#### TAXATION OF COSTS, AND DIRECTIONS TO TAXING OFFICERS.

*Rules 154-156,  
superseded*

**Rule 154** provided that the practice of the Courts as to costs and the services to be allowed for, in all proceedings in the taxation of costs, shall be governed, in all cases not otherwise provided for, by the established practice of the Court of Queen's Bench in England. It is now superseded by the tariff of the Supreme Court of September 10, 1881.

**Rule 155** related to costs in actions within the competence of a County Court, but not marked "inferior jurisdiction," and was rescinded by, and see *Rule 1* of August 27, 1860, *post* p. 557.

**Rule 156** provided that in any action of the proper competence of the County Court, in which the venue could not, according to the law and practice of the Superior Courts, be changed upon the usual

affidavit only, trial thereof the County Court for either of the allowance of a or defendants, which the deb accrued, into a that he or the place than with *Rule S. C. 428*,

**157.** Fees party and p trial or arg

It seems dou If in force at al Court: see *Rule*

**158.** No which may in Court in

This *Rule* ap Divisions of the

**159.** At t costs, when t are large, an which the ta be an affida agent or cle that the disl rect, and we charged for party to who £—, with br may have b pleadings ar

This *Rule* ap Divisions of the

The affidavit r disbursements :

affidavit only, it shall not be a sufficient ground to certify at the trial thereof that it is a fit cause to have been withdrawn from the County Court, and commenced in either of the Superior Courts, or for either of those Courts, or for a Judge in Chambers, to order the allowance of any other than County Court costs, that the defendant or defendants, or any of them, had removed from the county in which the debt was contracted, or the cause of such suit or action accrued, into any other county or elsewhere out of such county, or that he or they resided or were served with process in any other place than within such county. It appears to be now obsolete: see *Rule S. C.* 428, 511.

**157.** Fees shall in no case be taxed as between party and party to more than two counsel upon any trial or argument

No more than two counsel fees to be taxed on trial or argument.

It seems doubtful how far this *Rule* is in force: see *Rule S. C.* 445. If in force at all, it would seem to apply to all Divisions of the High Court: see *Rule S. C.* 432.

**158.** No counsel fee shall be taxed on any rule which may be obtained without filing a motion paper in Court in term.

No counsel fee taxable on side-bar rules.

This *Rule* appears to be still in force, and applicable to all the Divisions of the High Court: see *Rule S. C.* 432, 445.

**159.** At the foot of, or accompanying every bill of costs, when the action is special and the disbursements are large, and the fees paid to counsel exceed those which the taxing officer is permitted to tax, there shall be an affidavit of the attorney in the cause, or the agent or clerk having had the management thereof, that the disbursements charged in such bill are correct, and were actually paid, and that the several sums charged for mileage were actually paid (naming the party to whom payment was made), that the sum of £—, with brief at trial or argument, or as the case may have been, was paid to Mr.—, and that the pleadings are special, and were revised by Mr. —.

A affidavit of disbursements to be filed, form of

This *Rule* appears to be still in force, and applicable to all the Divisions of the High Court: see *Rule S. C.* 445.

The affidavit may be made by the client where he has made the disbursements: see *Rule 165 infra*.

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Affidavit of  
mileage.

**160.** In all cases an affidavit of payment of mileage, and to whom paid, is required.

This *Rule* is still in force, and applicable to all Divisions of the High Court: see *Rule S. C.* 445.

Rule 161 2  
obsolete.

**Rule 161** provided that when judgment is signed on a *cognovit*, or on a Judge's order authorizing the plaintiff to sign judgment, no declaration to ground judgment shall be necessary or allowed on the taxation of costs, and is obsolete.

**Rule 162** provided that the costs of attendance by counsel before a Judge in Chambers shall in no case be allowed as between party and party, unless the Judge shall certify for such allowance. It is now obsolete: see *Table S. C.*, item 165.

Any number of  
names may be  
included in one  
subpoena.

**163.** Any number of names may be included in one *subpoena*, and no more than one shall be allowed on taxation of costs, unless a sufficient reason be established to the satisfaction of the taxing officer for the issuing more than one.

This *Rule* is still in force, and applicable to all the Divisions of the High Court: *Rule S. C.* 445.

Fees to Coroner  
to be same as  
those to Sheriff  
for like services.

**164.** The same fees shall be taxed and allowed to coroners for services rendered by them in the execution and return of process in civil suits as would be allowed to a sheriff for the same services, and when, according to the nature of the process and the service rendered thereon, the sheriff, if he had discharged the same duty, would have been entitled to poundage, the same poundage shall be allowed to coroners, and each coroner shall be allowed one shilling for every juror necessarily summoned, and whose name is returned to the Clerk of Assize, in lieu of any other fee for summoning jurors.

This *Rule* is still in force, and applicable to all the Divisions of the High Court: see *Rule S. C.* 445; and *post* pp. 566-9.

Affidavits of in-  
crease, to be  
made by attor-  
ney, or his clerk  
having manage-  
ment of cause, or  
the client.

**165.** All affidavits of increase must be made by the attorney in the cause, or some clerk having the management thereof, or by the client. They must set

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*Polgrin v. Son*

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forth the sums paid to counsel, naming them, and for what service, the names of witnesses, their places of abode, the places at which they were subpoenaed, and the distance which each such witness was necessarily obliged to travel, in order to attend the trial, that every such witness was necessary and material for the client in the cause, that they did attend, and that they did not attend as witnesses in any other cause *or otherwise, as the case may be*. The number of days which each witness was necessarily absent from home in order to attend such trial must also be accurately stated. If an attorney attends as a witness, it must be stated whether or not he attended at the place of trial as attorney or witness in any other cause, and whether or not he had any other business there. The day on which the trial occurred should be stated. If maps or plans were used at the trial, the necessity for them must be shewn in the affidavit, or no allowance will be made for them; the sum paid for them must also be set forth, and that they were prepared or procured with a view to the trial of the cause. The taxing officer is authorized in such case to make a reasonable allowance for maps and plans.

Form of.

Allowance for maps, &amp;c.

This Rule appears to be still in force, and applicable to all the Divisions of the High Court; see *Rule S, C. 445*.

In *McGannon v. Clarke*, 9 P. R. 555, it was held that surveys and plans made to enable witnesses to give evidence, are not taxable between party and party. But plans and models, &c., useful to aid the Court and jury in coming to a right conclusion may be allowed; *Pelgrim v. Southampton and Dorchester C. W. Co.*, 8 C. B. 25.

Plans made to enable witnesses to testify, not allowed between party and party.

Sums when made for information of the Court, or jury.

Where a witness is rejected at *nisi prius*, and the ruling of the Judge is acquiesced in by the parties, and upheld by the Court, the expenses of his attendance are not allowed on taxation as between party and party; *Galloway v. Keyworth*, 15 C. B. 228. So, where a witness is rejected by an arbitrator, whether upon a sufficient, or an insufficient ground: *Ib.* When a cause at the Assizes is over at three o'clock in the afternoon, witnesses may reasonably be allowed the following day for their return home, though their place of residence be distant only about fifty miles, and accessible by trains on

Costs of witness rejected, not allowed.

Witness fees for attendance how allowed.

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the same evening: *Fryer v. Sturt*, 16 C. B. 218. It is not a general rule that parties, if witnesses, are to have an allowance for their attendance: *Dowdell v. Australian Royal Mail Steam Navigation Co.*, 3 El. & Bl. 902.

Witnesses are not, in general, allowed for attendance before the day appointed for the opening of the Court: see *Harvey v. Dicers*, 16 C. B. 497.

## MISCELLANEOUS.

Rule 166, obsolete.

**Rule 166** related to the computation of time, and is now superseded by *Rules S. C.* 456, 457.

A folio is 100 words.

**167.** Wherever the word folio is used in any rule or order, it shall be deemed to mean one hundred words.

This *Rule* is still in force, and applicable to all the Divisions of the High Court.

In cases unprovided for, former practice to prevail.

**168.** In all cases unprovided for by statute or rule of Court, the practice as it existed in these Courts before the passing of the Common Law Procedure Act, 1856, shall be followed.

This *Rule* appears to be still in force, subject to the express provision of *The Judicature Act* and *Rules S. C.*: see *ante*, vol. I, pp. 1-2.

## FORMS OF PROCEEDING.

Forms of proceedings.

**169.** The forms of proceedings contained in the schedule annexed, marked A, may be used in the cases to which they are applicable, with such alterations as the nature of the action, the description of the Court, the character of the parties, or the circumstances of the case, may render necessary; but any variance therefrom, not being in matter of substance, shall not affect their regularity.

This *Rule* is still in force, save as the forms referred to are varied or superseded by the Judicature Rules and Forms.

Tariff of Costs.

**170.** From and after the last day of this term, the tables of costs in civil actions in the Courts of Queen's Bench and Common Pleas shall be rescinded, and the costs set down in the schedule annexed, marked B, shall be those allowed in taxation.

This *Rule* tariff of Supp-  
ments is sti-  
*Rule S. C.* 4

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*Rule* which  
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*Rule S. C.* 14

This *Rule* is now varied so far as solicitors' fees are concerned by tariff of Supreme Court, of September, 1881. The tariff of disbursements is still in force in all the Divisions of the High Court : see *Rule S. C.* 432.

## RULES OF PLEADING.

The General Rules of pleading of Trinity Term, 20 Viet., are now superseded by the Rules of the Supreme Court, except the following *Rule* which relates to the plea of "not guilty by Statute," which may still be pleaded : *Rule S. C.* 145. See, however, *Rule S.C.* 125.

Rules of pleading.

**21.** In every case in which a defendant shall plead the general issue, intending to give the special matter in evidence, by virtue of an Act of Parliament, he shall insert in the margin of the plea the words "By Statute," together with the year or years of the reign in which the Act or Acts of Parliament upon which he relies for that purpose were passed, and also the chapter and section of each of such Acts, and shall specify whether such acts are public or otherwise, otherwise such plea shall be taken not to have been pleaded by virtue of any Act of Parliament ; and such memorandum shall be inserted in the margin of the issue and of the *Nisi Prius* record.

"Not guilty by Statute," plea of, to contain reference to Statute relied on.

Where the defence "not guilty by Statute," is pleaded no other defence can be set up without the leave of the Court or a Judge, *Rule S. C.* 145, and see Holmsted's Manl. Pr., p. 90.

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SCHEDULE A  
OF  
FORMS  
TO THE  
COMMON LAW PROCEDURE ACT,  
1856. (a.)

1. *Form of an Issue in general.*

Superseded.

2. *Special Case for the opinion of the Court, under sec. 85, (b) where the allowance or disallowance of a particular item or items depends on a question of law.*

The following case is stated for the opinion of the Court under a rule of Court (or order of the Honorable Mr. Justice ) dated the       day of       18       made pursuant to the eighty-fifth section of the Common Law Procedure Act, 1856 (*here state the material facts of the case bearing upon the question of law to be decided.*)

The question (or questions) for the opinion of the Court is (or are)

First—Whether, &c.

Second—Whether, &c.

3. *Issue to be tried by a Jury where the Court or a Judge has directed it under Section 85 (c), where the*

(a) Most of the forms given in this schedule are now obsolete, and while it has been thought as well to retain the headings, so as to indicate the nature of the forms, it has not been thought necessary to print any of them in *extenso*, except such as appear to be now of any practical utility.

(b) See now R. S. O. c. 50, s. 190.

(c) See now R. S. O. c. 50, s. 211.

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Section 86*

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5. *Form*

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6. *Form  
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7. *Postea*

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8. *Postea  
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others of the  
under sec. 1*

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9. *Form*

Supers

*allowance or disallowance of a particular item or items depends on a question of fact.*

Superseded.

*4. Special case stated by an Arbitrator under Section 86.*

(In the Special Case the Arbitrator must state whether the arbitration is under compulsory reference under this Act, or whether it is upon a reference by consent of the parties where the submission has been, or is to be made, a rule of one of the Courts. In the former case the Award must be entitled in the Court and cause, and the rule of Court must be set forth. In the latter case, the terms of the reference relating to the submission being a rule of Court must be set forth.)

*5. Form of a Nisi Prius Record in ordinary cases*

Superseded; see Rule S. C. 262.

*6. Form of a Postea on a verdict for the Plaintiff on all the Issues and where the Defendant appears at the Trial.*

Superseded.

*7. Postea on the Issue numbered 3, ante.*

Superseded.

*8. Postea where a Judge, upon a Trial before him, directs a reference on some of the Issues and of the Accounts involved therein, and takes a Verdict on others of the Issues, referring the amount of damages under sec. 156.*

Superseded.

*9. Form of Judgment for Plaintiff on a Verdict.*

Superseded.

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18. *Form of Entry after Judgment by default, or on Demurrer, where the damages are to be assessed before a Judge of a County Court.*

Obsolete.

19. *Form of Writ of Inquiry.*

Obsolete.

20. *Form of Return to be indorsed.*

Obsolete.

21. *Form of Judgment thereon.*

Obsolete.

22. *Form of Issue, where there are Issues in fact to be tried, as well as damages to be assessed on default, or on issues in law before the County Court.*

Obsolete.

23. *Form of Writ of Enquiry to try the issues and assess damages contingently on demurrer or issue by the record, or where there is judgment by default, or on demurrer as to part.*

Obsolete.

24. *Form of indorsement of Verdict thereon.*

Obsolete.

25. *Form of Nonsuit thereon.*

Obsolete.

26. *Form of Judgment thereon.*

Obsolete.

27. *Form of Entry of Judgment, where the Court or a Judge decides in a summary manner under section 84, before declaration.*

Obsolete.

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32. *Fieri Facias on a rule for payment of money under a judgment in form No. 27.*

Superseded : see Form No. 175, *Rules S. C.*

33. *Fieri Facias on a rule for payment of Money and Costs.*

Superseded : see Form No. 176, *Rules S. C.*

34. *Fieri Facias on a rule for payment of costs only*

Superseded : see Form No. 176, *Rules S. C.*

35. *Writ of Capias ad Satisfaciendum on a judgment for Plaintiff.*

To the Sheriff of, &c.

We command you that you take C. D. if he shall be found in your Bailiwick, and him safely keep so that you may have his body before our Justices of our Court of Queen's Bench (or Common Pleas) at Toronto immediately after the execution hereof, to satisfy £ ,\* (*the amount of all moneys recovered by the judgment*) which the said A. B. lately in our Court of Queen's Bench (or Common Pleas) recovered against the said C. D., for his damages (or debt and damages, or otherwise according to the form of action) whereof the said C. D. is convicted, as appears to us of record, and have you then there this Writ.

Witness, &c., (*as in usual form*).

36. *Writ of Capias ad Satisfaciendum on a rule for payment of Money.*

Victoria, &c., (same as in form No. 35, to the \*) which lately in our Court of Queen's Bench (or Common Pleas) by a Rule of our said Court (or by an order of the Honorable , one of the Justices of our Court of ) dated the day of 18 , were ordered to be paid by the said C. D. to A. B., as appears to us of record, and have you then there this Writ.

Witness, &c.

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*37. Writ of Capias ad satisfaciendum on a rule for payment of Money and Costs.*

Victoria, &c., (*same as No. 36, down to the words 'were ordered'*) were ordered to be paid by the said C. D. to the said A. B., together with certain costs in the said rule mentioned, which said costs have been taxed and allowed by our said Court at £ , (*the amount of the allocatur or allocaturs, if more than one*) as appears to us of record, and further to satisfy the said A. B. the said last mentioned sum, and have you then there this Writ.

Witness, &c.

*38. Writ of Capias ad Satisfaciendum, on a rule for the payment of Costs only.*

Victoria, &c., (*same as in No. 35, down to the word "immediately,"*) immediately after the execution hereof, to satisfy A. B. £ for certain costs, which, by a Rule of our Court of Queen's Bench (*or Common Pleas or by an order of the Honorable* one of the Justices of our Court of ) dated the day of 18 were ordered to be paid by the said C. D., to the said A. B., which said costs have been taxed and allowed by our said Court at the said sum, as appears to us of record, and have you there then this Writ. Witness, &c.

*39. Writs of Execution where the Court or a Judge decides on matters of account under section 84.*

See Form No. 175, *Rules S. C.*

*40. Writs of Execution where matter of account is referred to, and decided on by an Arbitrator, Officer of the Court, or Judge of the County Court.*

See Form No. 175, *Rules S. C.*

*41. Writ of Habere Facias in ejectment upon a Judgment by default.*

See Form No., 179, *Rules S. C.*

*42. Writ of Execution where the Court or a Judge decides on matters of account under section 84.*

See Form No. 175, *Rules S. C.*

*43. Writ of Execution where the Court or a Judge decides on matters of account under section 84.*

See Form No. 175, *Rules S. C.*

*44. Writ of Execution where the Court or a Judge decides on matters of account under section 84.*

See Form No. 175, *Rules S. C.*

*45. Fieri Facias where the Court or a Judge decides on matters of account under section 84.*

Victoria, &c.,  
To the Sheriff of the County of  
We command you that you do cause the said A. B. to be paid by the said C. D., the sum of £ , in your Bailiwick of the County of , the amount of (a) the judgment rendered by the Court of Queen's Bench heretofore and to be rendered by the Court of Queen's Bench in order of the said Court of Queen's Bench, in the said case, to satisfy the said A. B. towards satisfaction of the said C. D., as appears to us of record, and have you there then this Writ rendered to you.

(a) See Form No. 175, *Rules S. C.*

42. *Writ of Habere Facias and Fieri Facias for costs, upon a judgment for Plaintiff in Ejectment, where defendant has appeared.*

See Form No., 179, Rules S. C.

43. *Writ of Fieri Facias for costs only on a judgment for plaintiff in ejectment where defendant has appeared.*

See Form No., 175, Rules S. C.

44. *Writ of Habere Facias Possessionem on a rule to deliver possession of land pursuant to an award under sec. 96.*

See Form No., 179, Rules S. C.

45. *Fi. fa. against a garnishee under the 196th section (a) when the debt is not disputed or garnishee does not appear.*

Victoria, &c.

To the Sheriff, &c.

We command you that of the goods and chattels of E. F. in your Bailiwick you cause to be levied £ , being the amount of (or part of the amount of, if the debt be more than the judgment debt) a debt due from the said E. F. to C. D. heretofore attached in the hands of the said E. F. by an order of the Honorable , one of the Justices of our Court of Queen's Bench (or Common Pleas) dated the day , 18 , pursuant to the statute made in such case, to satisfy (or if the debt be less than the judgment debt towards satisfying) £ , which A. B. lately in our Court of Queen's Bench (or Common Pleas) recovered against the said C. D., whereof the said C. D. is convicted, as appears to us of record, and that you have that sum of £ before our said Court immediately after the execution hereof to be rendered to the said A. B. and in what manner you shall

(a) See now R. S. O. c. 50, ss. 309, 312, and Rule S. C. 372.

have executed this our writ, make appear to our Justices aforesaid at Toronto immediately after the execution hereof, and have you there then this writ.

Witness                      at Toronto the                      day of  
in the year of our Lord, 18                      .

46. *Ca. Sa. in the like case.*

Victoria, &c.

To the Sheriff, &c.

We command you that you take E. F., if he be found in your Bailiwick, and him safely keep so that you may have his body before our Justices of our Court of                      , at Toronto, immediately after the execution hereof, to satisfy A. B., £                      , being the amount (or part of the amount *if the debt be more than the judgment debt*) of a debt due from the said E. F. to C. D., heretofore attached in the hands of the said E. F. by an order of the Honorable                      one of the Justices of our Court of                      , dated the                      day of                      , 18                      , pursuant to the statute in such case made to satisfy (or towards satisfying, *if the debt be less than the judgment debt*) £                      which the said A. B. lately in our said Court of                      , recovered against the said C. D. whereof the said C. D. is convicted, as appears to us of record, and have you there then this writ.

Witness, &c.

47. *Writ against garnishee to shew cause why the judgment creditor should not have execution against him for the debt disputed by him, under section 197.*

Obsolete : see Rule S. C. 373.

48. *Declaration thereon.*

Obsolete : see Rule S. C. 373.

49. *Plea thereto.*

Obsolete : see Rule S. C. 373.

50. *Issue thereon.*

Obsolete : see Rule S. C. 373.

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51. *Postea thereon.*

Obsolete : see *Rule S. C. 373.*

52. *Judgment for plaintiff therein.*

Obsolete : see *Rule S. C. 373.*

53. *Fi. Fu. therein.*

Victoria, &c. To the sheriff of, &c.: We command you that of the goods and chattels of E. F. in your Bailiwick, you cause to be made £ , the amount (or part of the amount, *if the debt be more than the judgment debt*) of a debt due from the said E. F. to C. D., to satisfy (or towards satisfying, *if the debt be less than the judgment debt*) £ , which A. B. on the day of 18 , (*date of judgment against judgment debtor*) by the judgment of our Court of Queen's Bench (or Common Pleas) recovered against the said C. D., and whereupon it has been adjudged by our said Court that the said A. B. should have execution against the said E. F. for the said £ , and also £ , which in our same Court were adjudged to the said A. B. for his costs of suit which he hath been put to on occasion of our said Writ sued out against the said E. F. at the suit of the said A. B. in that behalf, whereof the said E. F. is convicted, and have the said moneys before our said Court at Toronto immediately after the execution hereof, to be rendered to the said A. B., and in what manner, &c.

54. *Ca. sa. therein.*

Victoria, &c., (*beginning as in the preceding form*) that you take E. F. if he be found in your Bailiwick, and him safely keep, so that you may have his body before our Court of Queen's Bench (or Common Pleas) at Toronto, immediately after the execution hereof, to satisfy A. B., £ , the amount (or part of the amount, *if the debt be more than the judgment debt*) of a debt due from the said E. F. to C. D., and for the levying of which it has been adjudged by our Court of Queen's Bench (or Common Pleas) that the said A.

U. W. O. LAW

B. should have his execution against the said E. F., to satisfy (or towards satisfying, *if the debt be less than the judgment debt*) £ , which the said A. B. on , (date of the judgment against the judgment debtor) by the judgment of the said Court, recovered against the said C. D., and further to satisfy the said A. B., £ , which in our same Court were adjudged to the said A. B. for his costs of suit which he hath been put to on occasion of our Writ against the said E. F. at the suit of the said A. B. in that behalf, whereof the said E. F. is convicted, and have you there then this Writ.

Witness, &c.

55. *Judgment for Plaintiff after verdict that a Mandamus do issue under section 277. (a.)*

(The same as in the ordinary form of an entry of judgment to the end of the postea, and then proceed,) Therefore it is considered that a Writ of Mandamus do issue commanding the defendant to (state the duty to be performed or the thing to be done as claimed by the declaration,) and it is also considered that the plaintiff do recover of the defendant the said moneys by the Court aforesaid, in form aforesaid, above assessed, and also £ , for his costs aforesaid in that behalf.

(In the margin of the Judgment opposite the words Therefore it is considered, &c., write Judgment signed the day of 18 , inserting the day of signing final Judgment.)

56. *Writ of Inquiry to ascertain the expense incurred by the doing of an Act, for the doing of which a Writ of Mandamus was issued under section 280. (b.)*

Victoria, &c.

To the Sheriff of the County (or United Counties) of , greeting.

(a.) See now R. S. O. c. 52, s. 6.

(b.) See now R. S. O. c. 52, s. 9.

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Witness.

57. *Writ of Habeas Corpus for the return of a person arrested under a Writ of Execution.*

Superior Court

58. *The Writ of Habeas Corpus is returned by the Court to the defendant's goods.*

Superior Court

59. *Indemnity Writ of Habeas Corpus.*

Superior Court

Whereas upon an application by A. B. the plaintiff, in an action against C. D., in our Court of Queen's Bench (or Common Pleas) at Toronto, our said Court did, on the day of 18 , (date of order) direct that (state the terms of the order directing the act to be done at the defendant's expenses) and the said A. B. (or and E. F., if another person than the Plaintiff has been appointed by the Court to do the Act.) has done the said act so directed to be done, and in order to enable our said Court to ascertain the amount of the expense of doing the same, we command you that by the oath of twelve good and lawful men of your Bailiwick, you do proceed diligently to enquire what is the amount of the expenses incurred by the said A. B. (or by E. F., as the case may be) in the doing of the said act, and that you send to our Justices of our said Court at Toronto, on the day of , now next ensuing, the inquisition which you shall thereupon take under your seal, and the seals of those by whose oath you shall take the inquisition, together with this Writ.

Witness, &c.

57. *Writ of Execution in detinue under section 201, for the return of the Chattel detained—and for a distressing until returned, separate from a Writ of Execution for damages or costs.*

Superseded : see now Form No. 179, Rules S. C.

58. *The like, but instead of a distress until the Chattel is returned, commanding the Sheriff to levy on Defendant's goods the assessed value of it.*

Superseded : see now Form No. 180, Rules S. C.

59. *Indorsement on Writ of Summons of Claim of a Writ of Injunction under section 283.*

Superseded : see now Form No. 6, Rules S. C.

U.W.O. LAW

60. Form of Debt Attachment Book under Section 199 (a) of the Common Law Procedure Act, 1856.

Name of Plaintiff.	Name of Judgment Debtor.	Amount of Judgment.	Date of Judgment.	Name of Garnishee.	Date of Order for Attachment.	Amount ordered to be paid by Garnishee.	Date of such Order.	Date of Order for Execution against Garnishee.	Date of Order that Judgment Creditor may proceed against Garnishee.

(a) See R. S. O. c. 50, s. 320.

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## SCHEDULE B.

## TABLE OF COSTS.

*General Allowance for Plaintiffs and Defendants, as well between Attorney and Client, as between Party and Party.*

This Tariff, so far as it prescribed the fees payable to the Attorney, is now superseded by Tariff of Supreme Court of 10th September, 1881.

## FEES. (a.)

*To be Taken and Received by the Clerks of the Crown and Pleas, or their Deputies, or by the Clerk of the Process.*

In addition to all Fees expressly imposed by Statute. (b.)

Every Writ .....	(b)	\$0 50
Every Concurrent, alias, Pluries, or Renewed Writ,		0 50
Every appearance entered, and filing memorandum thereof .....		0 20
Every appearance, each defendant after the first ..		0 10
Filing every Affidavit, Writ, or other proceeding (c)		0 07
Amending every Writ or other proceeding ....(d)		0 25
Every ordinary Rule .....	(b, d)	0 25
Every special Rule not exceeding six folios, per folio,		0 20
Every Judgment by Default .....		0 50
Every Final Judgment otherwise than Judgment by Default .....		0 50
Taxing every Bill of Costs, and giving allocatur.(b, e)		0 67

(a.) These fees are now payable in all the Divisions of the High Court: see Rule S. C. 432.

(b.) See R. S. O. c. 39, s. 53, for Statutory Fees.

(c.) Increased to 10 cents by 28 Vict. c. 5, s. 21.

(d.) Increased to 30 cents by 28 Vict. c. 5, s. 21.

(e.) Increased to 70 cents by 28 Vict. c. 5, s. 21.

U. W. O. LAW



## TARIFF OF DISBURSEMENTS.

Every Reference, Inquiry, Examination, or other special matter referred to the Master, for every meeting not exceeding one hour .....	1 00
Do. do. for every additional hour or less....	1 00
Upon Payment of Money into Court, for every sum under £50 .....	(a.) 1 00
Do. £50 and under £100.....	2 00
Do. £100, and above that sum.....	4 00
Every Certificate made evidence by Law, or required by the practice, including any necessary search(c.)	0 50
Exemplification, or Office Copy of Proceedings, per folio .....	0 10
Every Search, if not more than two terms.....	0 10
Every Search exceeding two, and not more than four terms.....	0 20
Every Search exceeding four terms, or a General Search .....	0 50
Every Affidavit, Affirmation, &c., taken before them,	0 20
Every Allowance and Justification of Bail ....(b.)	0 25
Taking Recognizance of Bail .....	(b.) 0 25
Filing affidavit, and Enrolling Articles previous to the admission of an Attorney .....	0 50
Every Admission of an Attorney .....	2 00
Entering Satisfaction on Record, and Filing Satisfaction piece, including any necessary search..	0 50
Every Commission for the Examination of Witnesses	1 00
Every Commission for taking Bail and Affidavit (to be on parchment) .....	2 00
Entering Exoneretur on Bail piece .....	(b.) 0 25
Making up Records of Conviction, or of Acquittal, per folio.....	0 10
Entering and Docketing Judgment .....	(c.) 0 50
For making the Entry required in the Debt Attachment Book.....	0 50

(a.) The fees now usually paid on payment of money into Court are the fees prescribed by the former Chancery Tariff, see *ante* vol. 1, p. 396.

(b.) Increased to 30 cents by 28 Vict. c. 5, s. 21.

(c.) See *R. S. O. c. 39, s. 53* for Statutory Fee.

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(a.) For fees election matter post.

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# COMMON LAW RULES.

555

## CLERK OF ASSIZE AND MARSHAL.

See now 44 Vict. c. 8, s. 1 (O.) ; 46 Vict. c. 7, s. 150 (O.)

## CLERK IN CHAMBERS. (a)

Every Summons . . . . . (b.)	0 25
Every Order . . . . .	0 50
For receiving and taking charge of Nisi Prius Records and Exhibits in each cause . . . . .	0 50
Filing each paper . . . . . (c.)	0 07
Every Fiat for a rule of Court . . . . . (b.)	0 25
Taking every Affidavit or Affirmation . . . . .	0 20
Office Copies of Papers, per folio . . . . .	0 10
For Searching, the same allowance as to the Clerk of the Crown and Pleas.	

## SHERIFF—(CIVIL SIDE.)

See Rule 2nd February, 1874, post p. 565.

## CRIER.

See now Tariff of Supreme Court 10th September, 1881.

## JURORS.

*Where not specially provided for by Statute.*

Special Jurors, each day's actual attendance, to be paid to those only who are sworn . . . . .	1 00
Common Jurors, when not paid by the county, every cause in the inferior jurisdiction, each Juror . .	0 12½
In every other cause, each juror . . . . .	0 25

See now 46 Vict. c. 7 s. 142, (O).

## ALLOWANCE TO WITNESSES.

See now Tariff of Supreme Court 10th September, 1881.

## COMMISSIONER.

See Rule 2nd February, 1874, post p. 568.

(a.) For fees payable to Clerk in Chambers in contested municipal election matters, see *Rules* relating to contested municipal elections, post.

(b.) Increased to 30 cents by 28 Vict. c. 5. s. 21.

(c.) Increased to 10 cents by 28 Vict. c. 5, s. 21.

U.W.O. LAW

Rules under  
Criminal Appeal  
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# RULES UNDER THE CRIMINAL APPEAL ACT,

(C. S. U. C. c. 113.)

(16 Q. B. 159; 8 C. P. 370.)

13th February, 1858.

Hilary Term, 21 Vict.

These rules regulated the practice on appeals to the Superior Courts in criminal cases. The provisions of C. S. U. C. c. 113, authorizing the granting of new trials, and appeals from applications refusing new trials in criminal cases, having been repealed by the Criminal Procedure Act of 1869, 33 Vict. c. 29 s. 80, (D.), these Rules are consequently now effete.

## RULES OF 19TH FEBRUARY, 1859.

(18 Q. B. 58; 9 C. P. 181.)

Hilary Term, 22 Vict.

Rules of 19th  
Feb. 1859.

A Tariff of Counsel Fees was prescribed, which was superseded by the subsequent Tariff of 6th March, 1880, which is now superseded by Tariff of Supreme Court of 10th September, 1881.

## CLERK OF PROCESS.

Clerk of Process  
to deliver to  
Clerks of C. P. of  
Q. B. & C. P.  
præcipes, and  
affidavits on  
which writs  
issued.

It is ordered that from and after the last day of this present term, the Clerk of the Process shall, on the opening of the respective offices each morning, or as soon thereafter as may be, deliver to the Clerks of the Crown of the respective Courts in which the process has been issued, all præcipes on which summonses were issued, and all orders and affidavits on which writs of *capias* were issued by him on the preceding day, that the same may be filed with the papers in the respective suits, to which such process, affidavits, and orders belong.

Also to deliver  
quarterly returns  
of all writs  
issued by him.

It is ordered that the Clerk of the Process shall deliver to each of the Clerks of the Crown of the re-

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These Rules  
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(21 Q. B. 58)

These Rules  
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see post p. 566.

RULE

It is Order

spective Courts on the first day of January, the first day of April, the first day of July, and the first day of October, if not a Sunday or legal holiday, and if so then on the first day thereafter not being a Sunday or legal holiday, in each and every year, quarterly returns of all writs issued by him during the preceding quarter to the respective Crown offices, naming each description of writ, and the dates on which the same were issued, to each of the Clerks of the Crown requiring the same, the first return thereof to be made on the first day of April next ensuing.

These *Rules* appear to be still in force in the Queen's Bench, and Common Pleas, Divisions.

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#### RULES OF 27TH AUGUST, 1860.

(20 Q. B. 123.)

Trinity Term, 24 Vict.

**Rule 1** rescinded *Rule* No. 155, of Trinity Term, 1856, and substituted therefor another rule providing for allowance only of County, or Division Court, costs respectively, in cases in which final judgment shall be obtained by a plaintiff without trial in cases within the competence of such Courts. The provisions of this *Rule* are now superseded by *Rule S. C.* 511, and see also *Rule S. C.* 515, *post*.

*Rules of 27th August, 1860.*

**Rule 2** related to the office hours to be observed by the Clerks of the Crown and Pleas, and was rescinded by *Rule* of 23rd May, 1874; and see now *Rule S. C.* 545.

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#### RULES OF 14TH AND 15TH FEBRUARY, 1862.

(21 Q. B. 581; 12 C. P. 210.)

Hilary Term, 25 Vict.

These *Rules* prescribed fees to be paid to Sheriffs on return of executions, and for removing and retaining property in replevin. They are superseded by the Tariff promulgated 2nd February, 1874: see *post* p. 566.

*Rules of Feb., 1862.*

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#### RULES OF THE 15TH FEBRUARY, 1862.

Hilary Term, 25 Vict.

It is Ordered, that the Form of Writs of Assignment

U.W.O. LAW

Rules of 15th  
Feb., 1862.

Form of writs of  
assignment of  
dower.

of Dower to be used under the Statute 24th Victoria, Chap. 40, (a) shall be as follows :

The Writ of Assignment of Dower required to be issued after a Judgment in an Action of Dower has been entered in favor of the Demandant, shall be in the form hitherto in use in Upper Canada.

And the Writ of Assignment of Dower, required to be issued under the second clause of the said Statute, when the right of Dower is acquiesced in by the owner of the estate, may be as follows :

Upper Canada. }  
County of } Victoria, by the Grace of God, &c.

To the Sheriff of the County of

Greeting :

Whereas, A. B., widow, who was the wife of C. D., deceased, demands against E. F., the third part of (*here describe the Estate in which Dower is claimed, as in other Writs of Assignment of Dower,*) as the Dower of the said A. B. of the endowment of the said C. D., heretofore her husband ; And whereas it has been made to appear to us in our Court of Queen's Bench, (or Common Pleas, *as the case may be,*) in Upper Canada, that the said E. F. is the owner of the said Real Estate out of which said Dower is claimed, and that he acquiesces in the said claim, and is willing to assign to the said A. B. her proper Dower, but that the said A. B. and E. F. are not agreed to as the admeasurement thereof : We therefore Command you, that without delay you do deliver the said A. B. seizin of her third part of the said

with the appurtenances,

To hold to her in severalty by metes and bounds ;  
And that you do proceed in the execution of this our

(a) This Statute was subsequently repealed by 32 Vict., c. 7, s. 1, (O.) and see now R. S. O. c. 55.

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Writ, according to the provisions of the said Statute, passed by the Legislature of our Province of Canada, in the twenty-fourth year of our Reign, (a).

Witness, &c.

*(When the Demandant has married again, since the death of her late husband, under whom she claims Dower, her name and description must be made such as to suit the circumstances.)*

#### RULES OF AUGUST, 1862.

(22 Q. B. 166; 12 C. P. 498.)

Trinity Term, 26 Vict.

Rules were passed this Term relating to appeals from County Courts, and are now obsolete. Rules of Aug., 1862, obsolete.

#### RULES OF 28TH NOVEMBER, 1863.

(23 Q. B. 66; 13 C. P. 492.)

Michaelmas Term, 27 Vict.

Rules 1-12, relating to "New Trial List," were rescinded by Rules of 28th Nov., 1863.  
Rules of September 9, 1865, *infra*.

#### PLEADING SEVERAL MATTERS AND DEMURRING.

**13.** In all cases in which a Judge's order to plead and demur, or to plead several matters, is rendered necessary according to the Consolidated Statutes of Upper Canada, ch. 22, sections 109 and 110, the original order, or a copy thereof, shall either be attached to the *Nisi Prius* Record or Demurrer Book, or shall be copied on the margin thereof: and in case of non-compliance with this rule, the Clerks or Deputy Clerks of the Crown shall not pass the record, nor shall the demurrer be argued. Order to plead, and demur, to be attached to record.

It seems doubtful whether this Rule is still in force: see *Rule S. C.* 194; a party may, on filing the affidavit required by that Rule, plead and demur without leave, but orders for leave to plead and demur are still necessary where the affidavit cannot be filed; and

(a) See now *R. S. O. c. 55*.

U.W.O. LAW

where an order is necessary, it is possible this *Rule* may be held to be still applicable. Leave to plead several matters is not necessary now in any case. See *post* p. 562, *Rule* 2 of 2nd December, 1865.

#### RULES OF 9TH SEPTEMBER, 1865.

(25 Q. B. 18; 15 C. P. 623.)

Trinity Term, 29 Vict.

Rules of 9th  
Sept., 1865.

Rules 1-12 of  
M. T., 1863, re-  
scinded.

The Rules of Court under the head "New Trial List," Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, passed in Michaelmas Term, 27 Vict., shall be from and after the first day of Michaelmas Term next, annulled and the following Rules shall come into force and take effect upon and after the first day of Michaelmas Term next.

#### NEW TRIAL LIST.

Rules 1-3 not in  
force.

**Rule 1** enabled the party who obtained any *Rule Nisi* for a New Trial, or for entering a Nonsuit, or a Verdict, or for increasing or reducing a Verdict, on leave reserved, on or after the fourth day, inclusive, after the serving such *Rule*, to file the same, together with affidavit of service, with the Clerk of the Court granting such rule. It is now superseded by *Rule S. C. 529, post*.

**Rule 2** enabled the party served with any such rule, (if the same had not been already filed by the party who obtained the same,) on or after the fifth day after the granting of the rule to file the copy served, with an affidavit of the fact and time of such service, with the Clerk of the Court granting such rule, and is now superseded by *Rule S. C. 530, post*.

**Rule 3** provided that in case the party to whom any such rule is granted shall neglect or delay to draw up and serve the same, the opposite party might, on or after the third day after the granting such rule, and upon filing with the Clerk an affidavit that the rule had not been served, enter a *ne recipiatur* with such Clerk, after which the Clerk was not to receive or enter such rule in the book required to be kept by him, and such rule was to be deemed to be abandoned, and the opposite party might proceed as if no such rule had been moved for or granted. It is now superseded by *Rule S. C. 531, post*.

Form of list to  
be prepared by  
Clerk.

**4.** The Clerk shall immediately, on the receipt of any rule, or copy, under the first or second rules, enter a memorandum thereof in a book to be kept for that purpose, in the order in which the same shall be delivered to him, such memorandum to be according to the form following :

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Plaintiff's name.	Defendant's name.	Description of Rule.	When filed with the Clerk.	How disposed of.
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This *Rule* is apparently still in force in the Queen's Bench and Common Pleas Divisions.

**Rule 5** provided that on certain days in each Term, after going through the bar to hear motions for rules *nisi*, or motions of course, the Courts would hear the rules for new trials so entered, according to the order in which they should stand, in preference to any other business. It was subsequently superseded by *Rules* of November 17, 1875, *post* p. 570. Rule 5-12 not in force

**Rule 6** provided that each Court, in its discretion, would hear any rule so entered when both parties are present and prepared to proceed, and is superseded by *Rule* 10, of November 17, 1875, *post* p. 573.

**Rule 7** provided, if, when a rule is called on in its proper order, the party who obtained the same does not appear to support it, and the opposite party attends and applies to have it discharged, such rule may be discharged accordingly, and was superseded by *Rule* 12, of November 17, 1875, *post* p. 573.

**Rule 8** provided, if the party called upon to shew cause does not appear when the rule is called on in its proper order, the Court will hear the other side, *ex parte*, and dispose of the rule, and is superseded by *Rule* 12, of November 17, 1875.

**Rule 9** provided, if neither party appear, the rule may, in the discretion of the Court, be treated as having lapsed, and be struck out of the Clerk's books, and is superseded by *Rule* 12, of November 17, 1875.

**Rule 10** provided that, in the absence of other business, the Courts may, in their discretion, hear rules so entered on any other days during Term besides those mentioned in the fifth rule, the parties to the rule being present, and desirous to proceed, and is superseded by *Rule* 10, of November 17, 1875.

**Rule 11** provided that each Court would, on sufficient ground shewn, upon affidavit, enlarge a rule so entered to a subsequent day in the same term, or to the following term, and the Clerk was to alter the entry accordingly, and place the enlarged rule at the foot of the list, and is now superseded by *Rules* 11 and 12 of November 17, 1875.

U.W.O. LAW



**Rule 12** provided for enlarging all rules entered by the Clerk as aforesaid, which remain unheard at the end of any Term. *Rule 2*, of December 1, 1875, abolished the necessity of enlarging any rule entered on the general list, see *post* p. 575.

Court may give special directions as to taking out and serving rule, &c.

**13.** The Court may, nevertheless, in any case, if it shall see fit so to do, make any special rule or order, or give any special direction upon, or with respect to any such rule, or the entering, taking out, or service thereof, or with respect to any supposed lapse or abandonment thereof, or otherwise, as it might have done before the passing of these, or the rescinded rules.

This *Rule* would appear to be still in force in the Queen's Bench, and Common Pleas, Divisions.

#### RULES OF 2ND DECEMBER, 1865.

(25 Q. B. 150.)

Michaelmas Term, 29 Vict.,

*Rule 1*, of 2nd Dec., 1865, not in force.

**Rule 1** amended the Table of Costs established by the *Rule* of Court, of Trinity Term, 20 Vict., as to fee for copy and service of writ of subpoena *ad testificandum*, and is now superseded by the tariff of the Supreme Court of September 10, 1881.

**2.** In all cases where leave is given to raise an issue or issues of law, together with an issue or issues of fact, to any declaration or subsequent pleading, the issue or issues of law should be determined before the trial of the issue or issues of fact, unless otherwise expressly ordered by the Court or Judge in the rule or order permitting such issue or issues to be raised.

It is doubtful how far this *Rule* is now in force. See *ante* p. 559, *Rule 13* of 28th November, 1863; and see *Rules S. C.* 193-195.

#### RULES OF 12TH FEBRUARY, 1867.

(26 Q. B. 421; 17 C. P. 442.)

Hilary Term, 30 Vict.

*Rules* of 12th Feb., 1867, not in force.

**Rule 1** provided that, in Easter, and Michaelmas, Terms, the first Friday, the second Monday, the second Wednesday, and the third Monday, should be "paper days" in the Court of Queen's Bench; and the first Saturday, the second Tuesday, the second Thursday, and the third Tuesday, in the Court of Common Pleas.

This *Rule* was afterwards rescinded by *Rule 17*, of November 17, 1875; and see *Rules 3, 6* of that date: See *post* pp. 571-2.

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**Rule 2** related to County Court appeals, and is now obsolete: see *R. S. O. c. 43, s. 2*, which transfers the jurisdiction to entertain County Court appeals to the Court of Appeal.

**Rule 3** provided that on the last Tuesday and Friday in Easter and Michaelmas Terms, the Court of Queen's Bench; and on the last Monday and Wednesday, in the said Terms, the Court of Common Pleas, would take the New Trial Paper, and proceed therewith, in like manner as on the other days appointed by rule of Court for that purpose. This *Rule* was afterwards rescinded by *Rule 17*, of November 17, 1875; and see *Rules 3* and *6* of that date, *post* pp. 571-2.

## RULE OF 6TH JUNE, 1868.

(27 Q. B. 559.)

Easter Term, 31 Vict.,

This *Rule* amended a *Rule* made in Michaelmas Term, 9 Vict., the 15th day of November, A. D. 1845, by striking out so much of the tariff of fees annexed thereto, as applies to sheriffs, and by substituting therefor the tariff of fees thereto annexed, and is now superseded by *R. S. O. c. 84, s. 2*, and the tariff of fees appended to that Act.

Rule of 6th  
June, 1868, *affete*

## RULE OF 2ND DECEMBER, 1869.

(29 Q. B. 494; 20 C. P. 164.)

Michaelmas Term, 33 Vict.

The *Rule* passed this day provided, that the first Wednesday in Hilary Term, in the Court of Queen's Bench, and the first Thursday in the said Term, in the Court of Common Pleas, should be New Trial Paper Days. This *Rule* was rescinded by *Rule 17* of 17 November, 1875, and see *Rules 3* and *6* of that date.

Rule of 2nd Dec.,  
1869, rescinded.

## RULES OF 9TH FEBRUARY, 1870.

(29 Q. B. 623; 20 C. P. 354.)

Hilary Term, 33 Vict.

Whereas by the Statute made and passed in the Session of the Legislature of Ontario, held in the thirty-third year of the reign of Her Majesty, intituled, "An Act respecting proceedings in Judge's Chambers at Common Law."

Rules of 9th  
Feb., 1870.

It is enacted that it shall be lawful for a majority of all the Judges of the said Courts, which majority shall include the two Chief Justices, and the Senior of the Puisne Judges of the Superior Courts of Common Law,

from time to time, to make and publish general rules for certain purposes therein mentioned.

*Jurisdiction of Clerk of Crown of Q. B. in Chambers defined.*

It is therefore ordered, that the Clerk of the Crown and Pleas of the Court of Queen's Bench, be, and is hereby, empowered and required to do all such things, and to transact all such business, and exercise all such authority and jurisdiction in respect of the same as by virtue of any Statute or custom, or by the rules and practice of the said Courts or any of them respectively, were, at the time of the passing of the said Act, and are now done, transacted, or exercised by any Judge of the said Courts sitting at Chambers, except in respect of matters relating to the liberty of the subject and to Prohibitions and Injunctions, and except (unless by consent of the parties) in respect of the following proceedings and matters, that is to say:—

*Matters excluded from jurisdiction of Clerk of Crown of Q. B., sitting in Chambers.*

All matters relating to Criminal proceedings.

The removal of causes from Inferior Courts, other than the removal of Judgments for the purpose of having execution.

The referring of causes under the Common Law Procedure Act.

Reviewing taxation of costs.

Staying proceedings after verdict.

Appeals in insolvency.

In all such excepted matters, not being matters relating to the liberty of the subject, the said Clerk may issue a summons returnable before a Judge.

That in case any matter shall appear to the said Clerk of the Crown to be proper for the decision of a Judge, the Clerk may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the Clerk with such directions as he may think fit.

That appeals from the Clerk's order or decision shall be made by Summons, such Summons to be taken out

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within four days after the decision complained of, or such further time as may be allowed by a Judge, or the said Clerk.

The appeal to be no stay, unless so ordered by a Judge, or the said Clerk.

The costs of such appeal shall be in the discretion of the Judge.

That the scale of costs for all matters done by and before the Clerk, shall be the same as are fixed for business done by and before the Judges.

That the same fees shall be taken in respect of business transacted before the said Clerk at Chambers as are now taken when the same business is transacted before a Judge.

That these Rules take effect on the 21st day of February, A.D., 1870.

The Master in Chambers now exercises the jurisdiction which by these *Rules* was conferred on the Clerk of the Crown and Pleas of the Court of Queen's Bench: see *Rule S. C. 420*, and *Chy. Ord. 560 ante* vol. 1, p. 339. Since the publication of the first volume of this work the jurisdiction of the Master in Chambers has been extended to all matters in which a Judge had jurisdiction in Chambers on the 17th December, 1884, except those matters excepted by *Rule S. C. 420 a*: See *Rule S. C. 548, post*.

Jurisdiction of  
Master in Cham-  
bers extended by  
*Rule S. C. 548*

The Master in Chambers may now entertain appeals from the Taxing Officers: see *Rule S. C. 544*.

Appeals from the Master in Chambers are now regulated by *Rule S. C. 427*.

#### RULES OF 9TH DECEMBER, 1871.

(22 C. P. 266.)

Michaelmas Term, 35 Vict.

The *Rules* passed this day prescribed a tariff of fees which is now for the most part superseded by the tariff of the Supreme Court, of September 10, 1881: certain fees thereby prescribed in contested municipal election matters will be found *post* p. 645.

#### RULES OF 7TH FEBRUARY, 1872.

(22 C. P. 277, 561.)

Hilary Term, 36 Vict.

The *Rules* passed this day postponed the operation of the preceding *Rule* of December 9, 1871; and also amended the tariff referred to therein in certain particulars; and they are now effete.

U.W.O. LAW

## SHERIFF'S TARIFF—CIVIL SIDE.

(23 C. P. 435.)

FEBRUARY 2ND, 1874.

From and after the first day of March next, the following fees and allowances shall be taken and received in Civil Suits, in the Superior Courts of Common Law, in lieu of fees for similar services and allowances under the tariffs now in force in the said Courts;

Every Warrant to execute any Process mesne or final, directed to the Sheriff, when given to a Bailiff ...	\$0 75
Arrest, when amount does not exceed \$200.....	2 00
“ “ “ \$400.....	4 00
“ “ over \$400.....	6 00
Bail Bond or Bond to the limits .....	2 00
Assignment of the same.....	1 00
Service of Process, non-bailable, Scire Facias or Writ of Revivor, each defendant (no fee for Affidavit of Service in such cases to be allowed, unless Service made or recognized, by Sheriff) .....	1 50
For each Summoner on Writ of Scire Facias per day, to be paid by the Sheriff .....	1 00
Serving Declarations, Subpœnas, Rules, Notices, or other papers (besides mileage) ...	0 75
—for each <i>additional</i> party served, 50c.	
Receiving, filing, entering, and endorsing all Writs, Declarations, Rules, Notices, or other papers, each	0 25
Return of all Process and Writs, except Subpœna...	0 50
Return of Declarations, Rules, Notices, or other papers	0 25
Every search, not being by a party to a cause or his Attorney .....	0 30
Certificate of result of such search, when required (a search for a Writ against lands of a party shall include sales under Writ against same party, and for the then last six months).....	0 75

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Notice of appointment for ballot of Jury.....	\$0 50
Notice to Clerk of Peace of such appointment.....	0 50
Fee on balloting Special Jury ... ..	5 00
Fee on striking " .....	2 50
Serving each Special Juror (besides mileage at 13c. per mile).....	0 50
Returning Panel of Special Jurors .....	1 00
Keeping and checking pay list of Special Jurors' at- tendance, in each case... ..	1 00
Every Jury sworn, or Cause tried before a Judge.....	1 00
Poundage on Executions, and on attachments in the nature of Executions, where the sum made shall not exceed \$1000, six per cent.....	
Where the sum is over \$1000 and under \$4000, three per cent., when the sum is \$4000 and over, one and a half per cent., in addition to the poundage allowed up to \$1000, exclusive of mileage, for going to seize and sell, and except all disbursements neces- sarily incurred in the care and removal of property(a)	
Schedule taken on Execution, attachment, or other process, including copy to Defendant, not exceeding 5 folios... ..	1 00
Each folio above 5.....	0 10
Drawing advertisements when required by law to be published in the official Gazette or other news- paper, or to be posted up in a Court House or other place, and transmitting same, in each suit... ..	1 50
Every necessary notice of Sale of Goods, in each suit	0 75
Every notice of Postponement of Sale, in each suit...	0 25
The sum actually disbursed for Advertisements re- quired by law to be inserted in the official Gazette or other newspaper.....	
Executing Writ of Possession and serving and execut- ing Writ of Restitution, besides mileage .....	6 00
Bringing up Prisoner on attachment or Habeas Corpus, besides travel at 20c. per mile.....	1 50

(a) See *Fleming v. Hall*, 9 P. R. 311; *Morrison v. Taylor*, *Ib.* 390;  
*Grant v. Grant*, 10 P. R. 40.

U.W.O. LAW

Actual and necessary mileage from the Court House to the place where service of any Process paper or proceeding is made, per mile.....	0 13
Seizing Estate and Effects on attachment against an absconding debtor .....	3 00
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Master, or by order of the Court or a Judge	
Presiding or attendance on execution of Writ of Enquiry, or under any Writ of Escheat, or other Writ of a like nature.....	5 00
Summoning each Juror in such case.. ..	0 25
Bailiff's Fee summoning Jury, mileage per mile .....	0 13
Hire of Room, if actually paid, not to exceed \$2 per day .....	
Mileage from the Court House to the place where Writ executed, per mile.....	0 13
Drawing Bond to secure Goods taken under an attachment against an absconding debtor, if prepared by Sheriff .....	1 50
Every Letter written (including copy) required by party or his attorney respecting Writs or Process, when postage prepaid.....	0 50
Drawing every Affidavit when necessary and prepared by Sheriff .....	0 25
Precept or Warrant to Bailiff in Replevin .....	0 75
Drawing Notice for service on Defendant in Replevin	0 75
Delivering Goods to the party obtaining the Writ of Replevin .....	3 00
For Writ De Retorno Habendo .....	1 00
Drawing Replevin Bond.....	2 00
All necessary disbursements for the possession, care and removal of property taken in Replevin.....	
Viewing Lands, and instructing Surveyors under Hab. Fac. Seisin, exclusive of mileage, per day .....	5 00
Giving Possession, exclusive of mileage and assistance	5 00
All necessary disbursements to Surveyors and others for surveying the lands and giving possession, to be allowed to the Sheriff.....	

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## CORONERS.

The same Fees shall be taxed and allowed to Coroners for services rendered by them in the service, execution, and return, of process, as allowed to Sheriffs for the same services, and above specified.

## CRIER.

See now Tariff of Supreme Court of 10th September, 1881.

## ALLOWANCE TO WITNESSES.

See now Tariff of Supreme Court of 10th September, 1881.

## COMMISSIONER.

For taking every Affidavit.....	0 20
Taking every Recognizance of Bail .....	0 50

## RULES OF 14TH FEBRUARY, 1874.

(34 Q. B. 291 : 23 C. P. 412.) Hilary Term, 37 Victoria.

The Rules passed this day regulated proceedings under *The Controverted Elections Act, 1873*, (D.) They are now effete, being superseded by the Rules passed under *The Controverted Elections Act, 1874*, (D.): see *post*.

Rules of 4th Feb., 1874, effete.

## RULES OF 23RD MAY, 1874.

(35 Q. B. 193 : 24 C. P. 228.) Easter Term, 37 Victoria.

This Rule rescinded Rule 2 of 27th August, 1860, and regulated the office hours of the Clerks of the Crown and Pleas. It is now effete : see *Rule S. C. 545, post*.

Rules 23rd May 1874, rescinded.

## RULES OF 5TH SEPTEMBER, 1874.

(39 Q. B. 404 : 24 C. P. 299.) Trinity Term 38 Victoria.

The Rules passed this day regulated the weekly sittings of the Judges of the Queen's Bench, and Common Pleas, and provided that rules issued out of Term should be four day rules; and regulated the setting down of demurrers, &c. They were rescinded by Rule 23 of 15th May, 1876, *post* p. 584, and see now, *Rules H. C. J.*, i., ii., v., vi., vii., viii.

Rules of 5th Sept. 1874, rescinded.

U.W.O. LAW



## RULES OF 22ND DECEMBER, 1874.

(24 C. P. 498.)

Michaelmas Term, 38 Victoria.

Rules of 22nd  
Dec. 1874,  
obsolete.

The *Rules* passed this day provided that: "Subject to the direction of the Court in all cases, that hereafter the first six cases standing undisposed of on the new trial list, or such other cases as the Court shall see fit to direct, shall stand on such new trial list each new trial day, if the time of the Court will permit; and that no such case shall be put off or postponed, without a special application being made to the Court, or a Judge, on affidavit, and on such terms as to payment of costs of the day and otherwise, and on such terms as to the Court, or Judge, shall seem fit; and that if any such case is not disposed of on the day for which it stands, by being argued or postponed, if it is reached in its turn, and the time of the Court admits of its being so argued or postponed, it shall be struck out of the new trial list, and the rule granted therein shall be discharged, unless otherwise ordered."

Also, "That the Clerk of each Court shall prepare a list of such cases, to be so peremptorily disposed of, for each new trial day; and shall put up such list on the usual paper board of each Court respectively, on the day before that on which the said cases are to come on."

These rules are virtually obsolete, the practice in both the Queen's Bench, and Common Pleas, Divisions, being now to have one general list, from which causes are from day to day placed on the peremptory list: see *Rules* of 17th November, 1875, *infra*.

## RULES OF 17TH NOVEMBER, 1875.

(25 C. P. 547.)

Michaelmas Term, 39 Victoria.

The business of the Court in Term shall be conducted as follows:—

Motions of course  
to be taken first.

1. Every day in Term, the Court shall first hear Motions for Rules by Consent, or which may be had without argument, which shall be called Motions of Course.

This *Rule* appears to be still in force and to apply to Divisional Courts of the Queen's Bench, and Common Pleas, Divisions, in practice it is not very rigidly enforced.

Motions affecting the liberty of the subject are entitled to precedence of all others: *Ashton v. Storrock*, 43 L. T. N. S. 530; and see *infra* *Rule* 5.

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2. Motions upon or against any trial, verdict, assessment, or nonsuit, shall, after the Motions of Course, take precedence of all other business, upon the days now appointed by the Court, or which are allowed by Statute for such purpose, excepting on Paper Days.

Motions respecting trials to be taken after motions of course, on days appointed therefor.

This Rule is still in force in the Queen's Bench and Common Pleas Divisions. As to days on which motions for new trials, or to set aside judgments must be made in these Divisions: see *Rule 8. C. 527, 510, 528, post*; and see note to *Rule 3, infra*.

3. The *First Friday*, and the *Second Monday*, in the Queen's Bench, and the *First Saturday*, and the *Second Tuesday*, in the Common Pleas, shall be Paper Days; and also any other day or days, which the Court may, from press of business, or other necessity, from time to time appoint.

Paper Days, what are

It is doubtful whether this Rule is any longer in force. The practice in both the Queen's Bench, and Common Pleas, Division, is no longer to make any distinction between Paper Days and other days during the Divisional Court sittings. Paper Days were formerly days set apart for the argument of demurrers, and special cases, &c.

4. County Court, and Controverted Election, Appeals, shall be set down for hearing, as at present, on the first and second of such Paper Days, and Appeals or re-hearings from the decision of a single Judge, sitting for the full Court, and Crown Cases, reserved, shall be set down on any Paper Day of the Term.

Appeals, how to be set down.

This Rule is now obsolete except as regards Crown cases reserved, as to which see *post* pp. 57-8. Appeals from the County Courts must now be carried to the Court of Appeal, *R. S. O. c. 43, ss. 34-42*; *ib. c. 38 s. 19*; appeals in Controverted Dominion Elections must now be carried to the Supreme Court; see *38 Vict. c. 11, s. 48 (D.)*; *42 Vict. c. 39, s. 10 (D.)*. Possibly an appeal from an interlocutory decision of a Judge in Chambers, in an election petition, might still be appealed to the Divisional Court. Since *The Judicature Act* the decision of a single Judge sitting for a full Court cannot be appealed from to a Divisional Court, *Re Galerio*, *46 Q. B. 379*; *Wansley v. Smallwood*, *10 P. R. 233*.

5. On the last day of Term, after Motions of Course have been taken, other general business may be pro-

Cases involving argument not to be heard without

leave on last day of term, except when affecting personal liberty.

ceeded with, but no case involving argument, unless affecting personal liberty, shall be heard, without the leave of the Court.

This Rule is still in force in the Queen's Bench, and Common Pleas, Divisions.

Order of business on other days in term.

**6.** Upon other days in Term, than those already mentioned and provided for, the business shall be proceeded with as follows :—

1. Motions of Course.
2. Motions for Rules Nisi, on special motions.
3. The cases on the Peremptory List, in the order in which they are entered.

This Rule appears to be still in force in the Queen's Bench, and Common Pleas, but it is not rigidly enforced. The usual practice of these Divisional Courts being to go through the bar generally and hear any motions and then to take up the cases set down in the paper. Motions affecting the liberty of the subject are entitled to precedence of all others : *Ashton v. Storrock*, 43 L. T. N. S. 530.

After special business is over, Court may take other matters.

**7.** After the special business on any day is over, the Court may take any other matter, in which the parties are prepared to proceed.

This Rule is still in force in the Queen's Bench, and Common Pleas, Divisions.

Cases to be argued to be entered on general list.

**8.** Every Rule, Demurrer, and Special Case to be heard by the full Court, shall, before argument, be entered by the Master on a General List, in its order, as set down by either party ; and no such case shall be heard which is not so entered, unless by special order of the Court.

This Rule appears to be still in force in the Queen's Bench, and Common Pleas, Divisions. See *Rules H. C. J. v. vi.*

Cases in general list may, by leave, be heard any day.

**9.** Eight (a.) cases, in the order of their priority, on the General List, shall be set down by the Master in the Peremptory List for argument, on each day in Term,

(a.) This Rule was afterwards amended by Rule of 21st November, 1880, post p. 584, by the substitution of the word "six" for "eight."

excepting and no a until the disposed

As amended Bench, and p. 570. The

**10.** Any any day,

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**13.** If al day, are no be entered

excepting on Paper Days and upon the last Saturday, and no argument shall be heard in any other case, until the cases in the Peremptory List for the day are disposed of.

As amended this *Rule* appears to be still in force in the Queen's Bench, and Common Pleas, Divisions; but see note to *Rule 3*, ante p. 570. The word "Master" is now to be read "Registrar."

**10.** Any case on the General List, may be heard on any day, by consent, and by leave of the Court.

Cases in general list, may be heard any day.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

**11.** Any case entered on the Peremptory List for any day, and postponed by order, or by default, shall be placed at the foot of the General List, unless, for sufficient cause, it shall be otherwise specially ordered by the Court.

Cases on peremptory list postponed, to be put at foot of general list.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

**12.** If either party to a case on the Peremptory List, is prepared to be heard and the other party is not prepared, and it is not duly postponed as aforesaid, the Court may hear the party so prepared, whereupon the case shall stand for judgment; or the Court may extend the time on sufficient cause being shown by affidavit, to enable the other party to be heard, on payment of the costs of the day, if the Court shall so order. If neither party to a case on the Peremptory List is ready, the Court may, if it see fit, strike the case out of the list.

Party ready to proceed with case on peremptory list, may be heard, though other side not ready, or cause may be enlarged

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

**13.** If all the cases on the Peremptory List for any day, are not disposed of on that day, such cases shall be entered by the Master first on the Peremptory List

Causes on peremptory list not disposed of, to be entered first for next day.

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for the next day, as part of the eight cases, for such next day.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions. See note (a) to *Rule* 9, *ante* p. 572. The word "Master" is now to be read "Registrar."

Court may, in its discretion, vary the order of business.

**14.** In case it is required, in the opinion of the Court, for the more convenient and expeditious disposal of business, that a change should be made in the above Rules, for the hearing of any particular matters, the same shall be made from time to time as may be necessary to meet the emergency, as in matters relating to Contempts of Court, or to Attorneys, or to Writs of Habeas Corpus, or other proceedings affecting personal liberty, or to any other matter or business of the Court.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

*Rule* 15 effete.

**Rule 15** provided that "the present list of cases for argument in Court shall remain as it is, and be the General List of Cases, under these Rules," and is now effete.

Precedence of Attorney General not affected.

**16.** Nothing in these Rules contained, shall affect any priority which the Court has customarily granted to the Attorney-General, of moving, when he comes into Court.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

Rules to take effect Nov. 22, 1875.

**17.** These Rules shall come into force, on and after Monday, 22nd November, 1875, and all Rules heretofore made, which are inconsistent with the above Rules, are hereby repealed.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

#### RULES OF 1st DECEMBER, 1875.

(25 C. P. 547.)

Michaelmas Term, 39 Victoria.

It is ordered as follows :

Rule to rescind a Judge's order to be set down for a paper day.

**1.** Every Rule Nisi to rescind the order of a Judge or Clerk of the Court Sitting in Chambers shall be set

down to other da

This *Rule* in Common Pleas,

**2.** It from one special Case

This *Rule* Divisions; In cases wh issued: *Ru*

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**1.** In a for Trial shall be d of Causes posed of, entered, o

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**2.** If a otherwise and *Nisi* order, be head of th ing Court, otherwise

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down to be heard on a Paper Day in term, or on such other day as the Court may specially order.

This *Rule* appears to be in force in the Queen's Bench, and Common Pleas, Divisions, but is no longer acted on in practice.

**2.** It shall not hereafter be necessary to enlarge from one Term to another any Rule, Demurrer, or Special Case, entered by the Master on the General List.

*Rules to enlarge abolished.*

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions; it extends only to motions entered on the General List. In cases which have not been set down enlarged rules must still be issued: *Rule 122* of T. T. 1856; see *ante* p. 526.

#### RULES OF 4TH DECEMBER, 1875.

(25 C. P. 550.)

Michaelmas Term, 39 Victoria.

It is ordered as follows;

**1.** In all Causes where the Record is duly entered for Trial at the Court of Assize and *Nisi Prius*, it shall be deemed to be entered and remain on the list of Causes for Trial, until it is tried or otherwise disposed of, either at the Court at or for which it is entered, or at a subsequent Court.

*Cases entered for trial to remain on list until disposed of.*

This *Rule* is still in force, and would seem now to apply to all the Divisions of the High Court.

**2.** If any Records entered for Trial be not tried or otherwise disposed of at any particular Court of Assize and *Nisi Prius*, they shall, unless the Court otherwise order, be made Remanets, and as such stand at the head of the List of Causes for Trial at the next ensuing Court, and so from Court to Court, till tried or otherwise disposed of.

*Remanets not to be re entered, but to stand at head of list for next Court.*

This *Rule* is still in force and would seem to apply to actions in all the Divisions of the High Court entered for trial at the Assizes, *Donovan v. Boulton*, 19 C. L. J. 352.

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Where case a remanet, no further notice of trial necessary.

**3.** In the case of Remanets, no Notice of Trial or Assessment, other than the first or original Notice of Trial or Assessment, shall be given or necessary.

This *Rule* is still in force, and would seem to apply to actions in all Divisions of the High Court, entered for trial at the Assizes, *Donovan v. Boulthée*, 19 C. L. J. 352. The same Rule applies when the Judge adjourns a case until the next Assizes.

Rule 4 not in force.

**Rule 4** provided that the party entering the record for trial or assessment may, after the close of the first or any subsequent Court countermand his notice of trial or assessment, by giving a written notice of countermand to the opposite party, and to the Clerk of the Court of Assize and Nisi Prius, at least ten days before the ensuing Court. This *Rule* is now superseded by *Rules S. C.* under which a notice of trial can no longer be countermanded: *Friendly v. Carter*, 9 P. R. 41.

List of causes at Assizes.

**5.** A List of Causes entered for Trial shall, on the first day of each Court of Assize and *Nisi Prius*, be posted up by the Clerk of the Court in some conspicuous place in or near the Court-room, there to remain during the whole time of each Court of Assize and *Nisi Prius*.

This *Rule* is still in force, and applies to actions in all the Divisions of the High Court entered for trial at the Assizes. Separate lists of the defended, and undefended cases, must be made: see *Rule S. C.* 267.

Clerk to strike out cases from list as disposed of, or make other necessary entries.

**6.** It shall be the duty of the Clerk of the Court, from time to time, as each cause on the List is tried or otherwise disposed of, to strike the same from the List or make other necessary entry as to the same.

This *Rule* is still in force, and applies to actions in all the Divisions entered for trial at the Assizes.

#### RULES OF 7TH FEBRUARY, 1876.

(26 C. P. 250.)

Hilary Term, 39 Victoria.

Whereas it was enacted by section 154 of the Common Law Procedure Act, 1856, That the Record of *Nisi Prius* should not be sealed or passed;

And whereas, in consequence, the practice in England as to making up and delivering Paper Books and Issue Books was introduced by Rule No. 33, of the General Rules as to Practice of Trinity Term, 1856;

And whereas, afterwards by section 203, of chapter 22 of the Consolidated Statutes of Upper Canada, it was provided that the Record of *Nisi Prius* need not be sealed, but shall be passed and signed as therein declared:

And whereas, in consequence of the last mentioned enactment, it has become expedient to rescind the Rule No. 33, of the General Rules of Trinity Term, 1856, and to make provision as hereinafter mentioned;

It is therefore ordered:

1. That Rule No. 33, as to Practice of Trinity Term, 1856, shall be, and the same is, hereby rescinded. Rule 33 of T. T., 1856, rescinded.

2. That the practice in England, as to making up and delivering Paper Books and Issue Books for the purpose of settling the same, is not to be allowed in future. Paper books and issue books abolished.

3. That all Rules or Orders, inconsistent with this Rule, shall be, and the same are, hereby rescinded. Inconsistent rules rescinded.

4. That this Rule shall take effect on and after the second Monday of the present Term of Hilary. Time rule to take effect.

These Rules appear to be still in force in all the Divisions of the High Court.

#### RULES OF 7TH FEBRUARY, 1876.

Hilary Term, 39 Victoria.

It is ordered as follows:

1. That when any Case shall be transmitted by a Court of Oyer and Terminer, or Gaol Delivery, or Gen- The original and three copies of Crown cases reserved to be de-

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Delivered to Clerk  
of Court for  
Judges four days  
before argument.

eral Sessions, for the consideration of the Justices of either of the Courts of Queen's Bench, or Common Pleas, for Ontario, the original Case, signed by the Judge or Chairman of Sessions reserving the question or questions of law, and three copies of such Case, one for each Judge, shall be delivered to the Clerk of the Court at least four days before the day appointed for the argument, unless otherwise ordered by the Court.

Form of case.

2. That every Case transmitted for the consideration of the Court, shall briefly state the question or questions of law reserved, and such facts only as raise the question or questions of law submitted. If the question or questions turn upon the indictment, or any count thereof, then the case must set forth the indictment, or the particular count.

Case to state  
whether judgment given, or  
postponed, and  
whether prisoner  
in custody or  
discharged, &c.

3. That every Case must state, whether judgment on the conviction was passed or postponed, or the execution of the judgment respited, and whether the person convicted be in prison, or has been discharged on recognizance of bail to appear and receive judgment, or to render himself in execution.

Cases sent back  
for amendment  
to be re-argued.

4. That whenever a Case is sent back for amendment, the same shall be re-argued, as regards the matter amended, unless the Court otherwise order.

The original, and  
three copies of  
amended case, to  
be delivered four  
days before argument.

5. That the original Case as amended, and three copies thereof, or only of the amended portion or portions thereof, if the Court so order, shall be delivered to the Clerk of the Court, at least four days before the day appointed for the re-argument, unless otherwise ordered by the Court.

Prisoner to have  
right to begin,  
and reply.

6. That on every such argument or re-argument, as aforesaid, the counsel for the prisoner or defendant, shall have the right to begin and reply, unless the Court otherwise order.

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**7. That these Rules shall take effect forthwith.**

These Rules are still in force in the Courts of Queen's Bench, and Common Pleas; and see *ante* p. 371, Rule 4.

JULIES OF 10th MARCH, 1876.

Hilary Term, 39 Victoria.

It is ordered as follows:

**1.** That on every application for a Rule for a New Trial, or to enter a verdict or nonsuit, where the evidence was at the trial taken down by a short-hand writer, there shall, unless the Court otherwise order be filed with the Motion Paper three copies of the evidence in words at length, each copy to be certified as correct by the short-hand writer.

Three copies of the evidence to be delivered on motions for new trial, &c.

This Rule is in force in all the Divisions of the High Court. In the Chancery Division the Judges require the party moving, to mark the passages in the evidence on which he relies.

**Rule 2** regulated the fees to be paid to short-hand writers for copies of evidence furnished by them. These fees are now regulated by Orders of the Lieutenant-Governor in Council.

Rule 2 effete.

**3.** That the disbursements incurred in any cause, matter or proceeding in obtaining copies of the evidence for the purposes of the foregoing Rules, shall unless the Court otherwise order, be costs in the cause to the party obtaining and paying for the same.

Costs of short-hand notes, to be costs in the cause.

This Rule is still in force in all the Divisions of the High Court.

**Rule 4** related to the fees payable for a copy of the evidence required by the parties or their solicitors. These fees are now regulated by Order in Council.

Rule 4 effete.

**5.** That all moneys received by the short-hand writer under the operation of the foregoing Rules shall, when the short-hand writer is paid by salary, be accounted for by him to the Clerk of the proper Court, and shall be by the Clerk of such Court deposited in

Money received by short-hand writer how applicable.

the Bank for the time being, where the moneys of the Province are deposited, to the credit of an account to be called "The Short-hand Writer's Fund."

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions, and a similar regulation exists in the Chancery Division. Mr. Clark, one of the Taxing Officers, has charge of the fund in the Queen's Bench, and Common Pleas, Divisions, and the Registrar of the Chancery Division, of that in the Chancery Division.

Short-hand  
writers not paid  
by salary, enti-  
tled to fees.

**6.** That when the short-hand writer is not paid by salary, the said moneys shall belong to and be the property of the said short-hand writer.

This *Rule* is still in force, and the same rule prevails in the Chancery Division.

Taxing officer to  
allow reasonable  
sum for short-  
hand writer in  
cases not provid-  
ed for.

**7.** That in cases other than hereinbefore provided for, the Master may in any Cause, matter or other proceeding, allow a reasonable sum for the expense of a short-hand writer, on the Certificate of the Judge before whom the examination of any witness or witnesses in any such Cause, matter, or other proceeding takes place

This *Rule* is still in force, and applies to all the Divisions of the High Court: see *Rules S. C.* 432, 445.

#### RULES OF 15TH MAY, 1876.

Easter Term, 39 Victoria.

Rules 1-5 of  
May 15, 1875, not  
in force.

**Rule 1** regulated the sittings of the Judges of the Superior Courts of Common Law each week in Osgoode Hall, and is now superseded by *Rule H. C. J. i.*

**Rule 2** provided no such sitting should be held in vacation, and is now superseded by *Rule H. C. J. i.*

**Rule 3** provided that such sittings should be held on Tuesdays and Fridays, at the hour of twelve o'clock noon, or on such other day or days, and at such other hour or hours as the Judge for the time being shall appoint, and is now superseded by *Rule H. C. J. ii.*

**Rule 4** provided that the Judge, if he sees fit, should sit only one day in each week, and is now superseded by *Rule H. C. J. ii.*

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**Rule 5** provided that the Judge may adjourn the sitting of the Court from one day to another, and so from day to day, if found necessary for the disposal of business, and is now superseded by *Rule H. C. J. ii.*

**6.** The Judge, sitting as aforesaid, shall, either before, during, or after such sitting, as the Judge may appoint, dispose of all such business in Chambers as cannot be disposed of by the Clerk of the Crown and Pleas of the Court of Queen's Bench.

Single Judge, Chamber business, how taken by.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

**Rule 7** provided that all rules for the purpose of the said sittings shall be four day rules, and shall, unless otherwise ordered by the Judge, be set down to be heard at the first sitting next after the same is returnable, and is now superseded by *Rule H. C. J. vii.*

*Rule 7-8* not in force.

**Rule 8** provided for setting down demurrers, special cases, and appeals from the decision of the Clerk of the Crown and Pleas of the Court of Queen's Bench in Chambers, and is now superseded as to demurrers, and special cases, by *Rule H. C. J. v.*, and as to appeals from the Master in Chambers by *Rule S. C. 427.*

**9.** All rules, demurrers, special cases, appeals, or other matters intended to be argued before the Judge, shall, previous to the sitting of the Judge, on the particular day for the hearing or disposal thereof, be entered by the Clerk of the Court on a list, one copy of which shall be delivered by the Clerk to the Judge, and another posted up outside of the Court-room.

Matters to be argued before single Judge, to be entered on list.

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions. For the practice in the Chancery Division, see *Chy. Ord.* 26, 418, 590-593; *Rule H. C. J. iv.*

**10.** All rules, demurrers, special cases, appeals, and other matters entered on the said list, shall be called on and disposed of in the order in which the same are entered on the list, unless the Judge otherwise order.

Causes to be called, in order entered on list.

U.W.O. LAW

This *Rule* is still in force in the Queen's Bench, and Common Pleas, Divisions.

Order of business.

**11.** The first business at each sitting shall be motions of course and motions for rules *nisi*; and the next, the cases on the list in the order in which they are entered, unless otherwise ordered by the Judge.

This *Rule* is still in force in the Queen's Bench, and Common Pleas Divisions.

Rules 12-21 not in force.

**Rule 12** provided that any party desiring the rule, order, or decision of the Judge, to be reviewed and reheard by the full Court in which the cause or matter is pending, shall give notice in writing to that effect to the opposite party within two weeks next after the day on which the rule, order, or decision shall have been granted, made, or pronounced, and is now superseded as to appeals from a Judge in Chambers by *Rule S. C. 414*; and appeals to a Divisional Court from a single Judge sitting for the full Court, are now abolished by *The Judicature Act*: see *Re Galerno*, 46 Q. B. 379.

**Rule 13** provided, that unless such notice as last aforesaid be given, the party in default shall, in the discretion of the full Court, be liable to pay the costs of the review and rehearing to the opposite party, whatever may be the result of the review and rehearing. This *Rule* is now superseded by *Rule S. C. 414*, as to appeals from a Judge in Chambers.

**Rule 14** provided, that except the full Court in the particular case otherwise order, there shall be no review or rehearing allowed by the full Court, unless the same be had within the term of the Court next following the granting, making, or pronouncing of the rule, order, or decision, with which the party is dissatisfied, and is now superseded by *Rule S. C. 414*, and see *Rules S. C. 307, 308, 523, 525, 527*.

There can be now no review or rehearing by a Divisional Court of any decision of a single Judge sitting in Court otherwise than for the trial of actions: see *Re Galerno*, 46 Q. B. 379.

**Rule 15** provided that if the review or rehearing be proceeded with within the period of two weeks next after the day of the granting, making, or pronouncing of the rule, order, or decision with which the party is dissatisfied, no notice in writing, such as required by *Rule 12*, shall be required to be given; but, if given, may be allowed for on taxation, and is superseded by *Rules S. C. 414, 307, 308, 523, 525, 527*.

**Rule 16**  
reheard shall  
during term  
may appoint  
and reheard  
same is to be  
*Galerno*, 46

**Rule 17**  
for review of  
three copies  
certified to be  
of a demurrer  
three copies  
be no longer  
from a single

**Rule 18**  
and rehearing  
to be reviewed  
same down to  
in force: see

**Rule 19** pro-  
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necessary for the  
Courts of Com-  
mon Pleas, see  
*Re Galerno*

**Rule 20** pro-  
vided that the  
down the cause  
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*Rule* appears

**Rule 21** pro-  
vided that the  
shall be held  
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This *Rule* is  
Common Pleas

**Rule 16** provided that the cause or matter to be reviewed and reheard shall be set down to be heard on one of the paper days during term, or on such other day during term as the full Court may appoint for the purpose, and shall be set down to be reviewed and reheard, at least two clear days before the day on which the same is to be argued. This rule seems no longer in force: see *Re Galerno*, 46 Q. B. 379.

**Rule 17** provided that the party setting down a cause or matter for review or rehearing shall deliver to the Clerk of the full Court three copies of the written decision, if any, delivered by the Judge, certified to be correct by the Reporter of the Court; and in the case of a demurrer, or special case, shall also deliver to the said Clerk three copies of such demurrer or special case. This *Rule* appears to be no longer in force, as there can be no appeal to a Divisional Court from a single Judge sitting in Court: see *Re Galerno*, 46 Q. B. 379.

**Rule 18** provided that notice in writing of the intended review and rehearing shall forthwith, after the cause or matter is set down to be reviewed and reheard, be delivered by the party setting the same down to the opposite party. This *Rule* appears to be no longer in force: see *Re Galerno*, 46 Q. B. 379.

**Rule 19** provided that no petition, rule, or order, shall be necessary for the purpose of review or rehearing in either of the Superior Courts of Common Law. This *Rule* appears to be no longer in force; see *Re Galerno*, 46 Q. B. 379.

**Rule 20** provided that, on a review or rehearing, the party setting down the cause or matter for review or rehearing, shall have the right to begin or reply, unless otherwise ordered by the Court. This *Rule* appears to be no longer in force: *Re Galerno*, 46 Q. B. 379.

**Rule 21** provided that nothing in the foregoing *Rules* contained, shall be held or taken, in any manner, to deprive any party of the right to have a cause or matter reviewed or reheard, where the right is conferred by statute, but only to speed the course of proceedings, with a view to such review and rehearing, and appears to be now effete.

**22.** Nothing in the said *Rules* contained shall be held or taken in any manner to interfere with the power of the Court or the Judge, in their or his discretion for good cause, as regards any particular case, to dispense with all or any of the said *Rules*.

This *Rule* appears to be still in force in the Queen's Bench, and Common Pleas Divisions.

U. W. O. LAW

Discretion of  
Judge as to order  
of business pre-  
served.

Rules of T. T.,  
1874, rescinded.

**23.** The *Rules* of Trinity Term, 38 Victoria, promulgated on the 5th September, 1874, shall be rescinded on, from, and after the day these *Rules* shall take effect.

Date when these  
rules to take  
effect.

**24.** These *Rules* shall take effect on the second Monday of the present term of Easter.

#### RULE OF 16TH MAY, 1876.

Clerk of Assize  
to return records  
and exhibits to  
registrars of dif-  
ferent divisions.

It is ordered that the Marshal and Clerk of Assizes for the County of York do forthwith, after the close of each Assize, or earlier if required, return to the Clerks of Queen's Bench and Common Pleas, and the Registrar in Chancery, all records in the said Courts respectively, together with all exhibits and other documents appertaining thereto.

This *Rule* is still in force, and applies to all the Divisions of the High Court.

#### RULE OF QUEEN'S BENCH OF 3RD JUNE, 1876.

(39 Q. B. 405.)

Rule of 3rd  
June, 1876,  
effete.

This *Rule* related to the business of Trinity Term, 1876, and is now effete.

#### RULES OF QUEEN'S BENCH, AND COMMON PLEAS, MAY 21st, 1877.

(41 Q. B. 565; 28 C. P. 139.)

Easter Term, 40 Victoria.

Rule of May 21,  
1877, effete.

This *Rule* provided that leave shall not be given to demur, and traverse the same pleading, unless on affidavit distinctly denying some one or more material statement or statements in such, and that unless in exceptional cases, in the discretion of the Court or Judge, affidavits merely as to the belief of the existence of just grounds of traverse shall not be sufficient, and is now superseded by *Rules S. C.* 193, 194.

#### RULE OF QUEEN'S BENCH OF 9TH JUNE, 1877

(41 Q. B. 566.)

Easter Term, 40 Victoria.

Rule of Q. B. of  
June 9, 1877,  
effete.

This *Rule* dispensed with sittings in Trinity Term, 1877, and is now effete.

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(28 C. P. 14)

This *Rule*  
now effete.

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now effete.

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This *Rule*  
effete.

## RULE OF COMMON PLEAS OF 9TH JUNE, 1877.

(28 C. P. 140.)

Easter Term, 40 Victoria.

This *Rule* dispensed with sittings in Trinity Term, 1877, and is now effete.

Rule of C. P. of June 9, 1877, effete.

RULES OF QUEEN'S BENCH, AND COMMON PLEAS,  
6TH JUNE, 1878.

(43 Q. B. 519; 29 C. P. 246.)

Easter Term, 41 Victoria.

It is ordered that the Real Representative acting under the Act respecting the partition and sale of real estate (*Revised Stat. Ont.*, c. 101) shall, in the case of proceedings being instituted in the Court of Queen's Bench, or Common Pleas, or a County Court, be entitled to demand and receive for all services performed by him under the said Act, the same fees, as near as may be, which are allowed by the Court of Chancery to Local Masters, or Special Examiners, for similar services.

Fees of Real Representatives, to be same as fees of Local Masters.

This *Rule* is still in force.

RULE OF QUEEN'S BENCH, AND COMMON PLEAS,  
6TH MARCH, 1880.

(30 C. P. 627.)

This *Rule* prescribed a tariff of counsel fees, and is now effete, being superseded by the tariff of the Supreme Court of 10th September, 1881.

Rule of March 6, 1880, effete.

## RULE OF QUEEN'S BENCH, OF 5TH JUNE, 1880.

(45 Q. B. 354.)

Easter Term, 43 Victoria.

This *Rule* dispensed with sittings in Trinity Term, 1880, and is now effete.

Rule of Q. B., June 5, 1880, effete.

## RULE OF COMMON PLEAS, OF 5TH JUNE, 1880.

(31 C. P. 219.)

Easter Term, 43 Victoria.

This *Rule* dispensed with sittings in Trinity Term, 1880 and is now effete.

Rule of C. P. of June 5, 1880, effete.

U.W.O. LAW



RULE OF QUEEN'S BENCH, AND COMMON PLEAS,  
27TH NOVEMBER, 1880.

Michaelmas Term, 44 Victoria.

**Rule 9, of M. T.,  
1875, amended.**

It is ordered that the *Rule* No. 9 of Michaelmas Term, 29 Victoria, be amended by substituting for "eight" cases to be set down by the Master in the Peremptory List for argument each day, the number of "six" cases.

See the *Rule* 9, referred to, *ante* p. 572.

RULE OF QUEEN'S BENCH.

(45 Q. B. 472.)

Michaelmas Term, 44 Victoria.

**Rule of Q. B. M.  
T., 1880, effete.**

This *Rule* extended the sittings of Michaelmas Term, 1880, and is now effete.

RULE OF COMMON PLEAS.

(31 C. P. 429.)

Michaelmas Term, 44 Victoria.

**Rule of C. P., of  
M.T., 1880, effete.**

This *Rule* extended the sittings in Michaelmas Term 1880, and is now effete.

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## FEES OF CLERKS OF THE PEACE.

RULES OF 15TH NOVEMBER, 1845.

Michaelmas Term, 9th Victoria.

It is ordered, under the authority of the statute passed in the eighth year of her present Majesty's reign, entitled, "An Act to regulate the fees of certain District officers, in that part of this Province called Upper Canada," that the fees in the table annexed to this Rule shall be taken and received by Sheriffs, Coroners, Clerks of the Peace, Constables, and Criers respectively, in the several Districts of this Province, for services rendered by them respectively, in the administration of justice, and for other District purposes, where such services were not remunerated by any law in force at the time of passing the said Act.

But it is to be understood :

1st. That besides the fees set down in this table, the several officers will be entitled as heretofore to receive fees for other services rendered by them respectively, which are not mentioned in this table, wherever specific fees for such services are fixed by any statute, the Judges having no authority under the Act referred to in this Rule, to make any regulation in such cases.

2ndly. That if it shall be found that a fee is specifically assigned, under any statute, for a service for which a fee has also been inadvertently fixed in this table, then in every such case it will be the fee mentioned in the statute which is to be charged for the

service, whether it be greater or less than that set down in the table, and this Rule, as to the charge for such service, will have no effect.

3rdly. That the assigning a fee in this table for any service rendered cannot have the effect of entitling the officer to that or any other remuneration for such service, where there is either no necessity for the service being rendered, or where the right or duty to render it has been legally transferred to some other officer.

4thly. That in regard to public allowances which may have been heretofore paid out of the District funds to any of the officers affected by this table, and which are not in the nature of a fee, such as allowances for office rent, fuel, stationery, &c., it is not to be inferred from their not being provided for in this table, that the claim to any such allowance is denied by the Judges. In that respect the several officers will stand on the same footing as before, and the control of the Justices and of the District Council, in regard to such allowances, will continue as before; the Judges having no authority under the Act either to grant, or reject, or to regulate, such allowances.

It has been observed by the Judges, that in some Districts the Clerk of the Peace has been allowed a certain fixed salary in lieu of fees. If such an arrangement could have been legally made before the recent statute, under which this table is framed, it could not now be adopted without some alteration by the Legislature of the provisions of the statute(a). In considering the probable advantages and disadvantages of such a mode of remuneration, it seems to the Judges, on the one hand, that it would save the Justices and the District Council much trouble, as well as the officer him-

(a) This may now be done: see 42 Vict. c. 18 (O.)

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self, and it would relieve the latter from the imputation of multiplying services, in order to accumulate fees; but, on the other hand, it is to be considered, that where the business of a public officer consists of a multitude of small duties, some of them very troublesome in their nature, the best security for their being duly performed is to give the inducement of a distinct remuneration for every distinct act of service; and as it seems that, under the present system, some difficulty has arisen in consequence of the Clerks of the Peace claiming the right to perform certain services which it is concluded rest now with the Clerk of the District Council, the Judges apprehend that if a fixed salary were to be substituted for all fees, there might then be a struggle in the opposite direction, and there might possibly be found a disposition in some of the Clerks of the Peace to leave to the Clerks of the District Councils the performance of some duties which are not clearly within their province.

(Signed)

J. B. ROBINSON, C. J.

J. B. MACAULAY, J.

J. JONES, J.

A. McLEAN, J.

C. A. HAGERMAN, J.

The Table of Costs referred to in this *Rule* was superseded by the following *Rule*, but its other provisions were continued in force.

U. W. O. LAW

# TARIFF OF FEES

## FOR THE

# CLERKS OF THE PEACE

TRINITY TERM, 26TH VICTORIA,  
5th September, 1862.

Whereas, the Table of Fees confirmed by the Judges of the Court of Queen's Bench, on the 15th November 1845, applicable to Sheriffs, Clerks of the Peace, Constables, and Criers, for services rendered in the administration of Justice, and for other County purposes, has become inapplicable in many respects to the duties as now performed by the respective Clerks of the Peace for the several Counties of this Province, and new duties have been assigned to the Clerks of the Peace since the making of the said Table.

And whereas, by the Consolidated Acts of Upper Canada, ch. 119, sec. 2, the said Table of Fees was to continue until otherwise appointed; and power was thereby given to the Chief Justices and other Judges of the Superior Courts of Common Law, at Toronto, from time to time, as occasion requires, by rule or rules by them to be made in Term-time, to appoint the Fees to be taken and received by such Sheriffs, Coroners, Clerks of the Peace, Constables and Criers, for such services as aforesaid.

*First.* It is Ordered, under and by virtue of such authority, that with respect to the duties performed by the several Clerks of the Peace, in the several Counties of this Province, the Table of Fees in the Schedule hereto annexed, shall be substituted for and taken in lieu of such Table of Fees.

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*Second.* That the Table of Fees in the Schedule hereto annexed, shall not be construed as interfering with the Orders made by the Judges of the Court of Queen's Bench, on the 15th November, 1845, further than as an alteration of the Fees to be taken by the Clerks of the Peace, for the several services stated in the Schedule hereto annexed.

## SCHEDULE OF FEES (a).

*To be taken and received by the Clerks of the Peace in this Province, in lieu of the Tables established on 15th November, 1845.*

	To be paid out of the County Funds.	To be paid by the party applying.
	\$ Cts.	\$ Cts.
1. For drawing Precept to Summon the Grand and Petit Jury, attending Justices to sign same, and transmitting to the Sheriff .....	4 00	
2. Attending each [General] Sessions ....	6 00	
3. Making up Record of each [General] Sessions .....	10 00	
4. Notice of every appointment of a Constable, under [Rev. Stat. c. 82], or other officer appointed by the Justices in Sessions, and notice of any order made by the [General] Sessions, when required to be notified to any person or party...	0 20	
5. Subpœna.....	0 50	0 50
6. Bench Warrant.....	1 00	

(a) This schedule of fees was confirmed by the Legislature: see 32 Vict. c. 11, s. 3; and see now *R. S. O.* c. 84, s. 2. See also additional fees prescribed by 33 Vict. c. 10 (O.), for services in County Judge's Criminal Court: *R. S. O.*, p. 897, *post* p. 601.

The words in [ ] indicate changes made in the wording of the tariff by the *R. S. O.* c. 84.

For cases bearing on this tariff: see *Rob. & Jos. Dig.* 668-71; *Dig. Ont. Rep.* (1882-84) 165.

U. W. O. LAW

## FEES OF CLERKS OF THE PEACE.

	To be paid out of the County Funds.	To be paid by the party applying.
	\$ Cts.	\$ Cts.
7. Every Recognizance of the Peace for good behaviour .....	1 00	
8. For discharging the same .....	0 50	
9. Making up Estreats of each Session (a) .....	1 00	
10. Every allowance of Certiorari (to be paid by the party applying) .....		1 00
11. Furnishing to Sheriff and Coroners revised lists of Constables, whenever ordered to be done by the Justices in General Sessions .....	1 00	
12. Reading any Statute, or public Proclamation, when required to be done by law .....	0 25	
13. Copies of Depositions or Examinations furnished to Prisoners, Defendants, or their Counsel, when required, each folio of 100 words (to be paid out of the County funds, or by the party applying, according to the nature of the case) .....	0 05	0 05
14. Receiving, filing, and reading each Presentment of the Grand Jury .....	0 50	
15. For copy thereof forwarded to the Government, or to the County Council, when directed by the [General] Sessions .....	0 50	
16. Arraigning each Prisoner or Defendant indicted (to be paid out of the County funds, or by the party applying, as the case may be.) .....	0 50	0 50
17. Empanelling and swearing the Jury in every case, whether criminal or otherwise, where by law a trial by Jury is to be had at the [General] Sessions, and when no fee is fixed by statute: (to be paid out of the County		

(a) See R. S. O. c. 88, s. 7.

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18. Swearing each Witness upon any trial by a Jury, or to go before the Grand Jury : (to be paid out of the County funds, or by the party, as the case may be) ..... 0 20 0 20
19. Filing each Exhibit on a trial : (to be paid out of the County funds, or by the party, as the case may be) .. ..... 0 08 0 08
20. Every Subpœna Ticket, or copy of Subpœna, when necessary : (to be paid out of the County funds, or by the party applying, as the case may be.) ..... 0 20 0 20
21. Charging the Jury with the Prisoner or Defendant, upon each indictment : (to be paid out of the County funds, or by the party, as the case may be) ..... 1 00 1 00
22. Receiving and recording each Verdict of a Petit Jury, in any case of trial by Jury, (to be paid out of the County funds, or by the party, as the case may be). ..... 0 50 0 50
23. Recording each Judgment or Sentence of the Court upon a Verdict or Confession, (to be paid out of the County funds, or by the party, as the case may be). 0 50 0 50
24. Making out and delivering to the Sheriff a Calendar on the Sentences at each Court ..... 1 00
25. Certified copy of Sentences sent with the Prisoners to the Penitentiary, [or Reformatory] after each Session ..... 0 50
26. Making up Record of Conviction or Acquittal, in any case where it may be

J. W. O. LAW



## FEES OF CLERKS OF THE PEACE.

	To be paid out of the County Funds.	To be paid by the party applying.
	\$ Cts.	\$ Cts.
necessary: (to be paid out of the County funds, or by the party applying, as the case may be,) per folio of one hundred words.....	0 10	0 10
27. Every Copy or Extract of a Record or Paper of any kind, required to be made by Law, or by Order of the Justices in Sessions, or for the Information and use of the Government, when required, and where no charge is fixed by law—if the same shall be less than 10 folios of one hundred words each...	1 00	1 00
28. If above 10 folios, then for each folio...	0 10	0 10
29. Discharging any Prisoner by proclamation .....	0 50	
30. Drawing bill of Costs, including taxation, and filing the same where necessary to be made and filed, as in cases of Assault, Nuisances or the like, and in Appeals (to be paid by the party).....		0 50
31. Drawing out and taking each Recognizance to appear, either of Prosecutor, Defendant, or Witness.....	0 50	0 50
32. Calling parties on their Recognizance, and recording their non-appearance, for each person called: (only to be charged where the parties do not answer).....	0 25	0 25
33. Drawing order of the Justices to Estreat and put in Process: (on the whole list)	0 50	
34. Entering any Order of Sessions, or of the [Judge who presided at the Sessions] to remit any Estreat, and recording an Entry of the same: (to be paid out of the County funds, or by the party relieved, as may be ordered) .....	0 25	0 25

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35. Entering and Extracting upon a Roll in Duplicate, the fines, issues, amerciaments, and forfeited Recognizances, recorded in each Session, making Oath to the same, and transmitting to the Sheriff.....	2	00
36. Making out and delivering to the Sheriff the writ of <i>feri-facias</i> and <i>capias</i> thereon .....	0	50
37. Making out and certifying copy of Roll and return of the Sheriff, and transmitting it to the [Provincial Treasurer](a)	1	00
38. Making up Book of Orders of Sessions, declaring the limits of the Division Courts, and entering the times and places of holding the Courts .....	1	00
39. Making out and transmitting a copy thereof to the Government.....	1	00
40. Making out and transmitting copies with letter to the Clerks of each Division Court, of the Divisions made by the [General] Sessions .....	1	00
41. Drawing Orders of Sessions for altering the limits of Division Courts.....	1	00
42. Making out and transmitting copies of such Orders to the Government.....	0	50
43. Making out and transmitting copies of such Orders to each Division Court affected by the alteration... ..	0	50
44. For each copy of Schedule of the Division Courts, with the order of Sessions, for publication.....	0	50
45. For every Search under three years (to be paid by the party making the search)	0	20

U. W. O. LAW

## FEES OF CLERKS OF THE PEACE.

	To be paid out of the County Funds.		To be paid by the party applying.	
	\$	Cts.	\$	Cts.
46. For the same, extending over three years			0	50
47. For every Certificate required of proof of a Deed, to be paid by the party applying for the same.....			1	00
48. For every other Certificate required by Law, or by order of the Sessions, to be given, where the same is under five folios: (to be paid out of the County funds, or by the party applying for the same, according to the nature of the case).....	0	50	0	50
49. For the same, if more than five folios, per folio .....	0	10	0	10
50. Copying orders of Court, and causing same to be published, where it is requi- site, for each order, exclusive of the expense of publication .....	0	50		
51. Receiving and filing affidavit of Bas- tardy (a), to be paid by the party pro- ducing it .....			0	25
52. Receiving and filing each Tender for any public work, or supply, or printing, or other service .....	0	25		
53. Making out a list of the several tenders on each occasion, as they are opened, specifying the names, prices, and other particulars, and filing the same, when required to be done by the Justices...	0	50		
54. Drawing Bonds or Agreements for the delivery of articles, or for doing the work for the Gaol or other County pur- poses, and attending execution, when required by the Justices.....	1	00		

(a) See R. S. O. c. 131, s. 3.

## 597

U. W. O. LAW

a) See *R. S. O.* c. 76, s. 7.

## FEES OF CLERKS OF THE PEACE.

	To be paid out of the County Funds.	To be paid by the party applying.
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63. Swearing each party to an Affidavit, where no charge is elsewhere provided for it : (to be paid out of the County funds, or by the party for whom the Affidavit is sworn, according to the nature of the case).....	0 20	0 20
64. Causing notice to be published of any special or adjourned Sessions, when directed by the Chairman of the [General] Sessions, or other two Justices, so to do : (exclusive of the amount paid the printer for publication) .....	1 00	
65. Sending notice of any such Session to the Justices individually, when it is directed by the Chairman, or other two Justices, for each notice .....	0 10	
66. Attending each adjourned or special Sessions, and making up Record thereof	2 50	
67. Receiving and filing Notices of Appeal, and the Appeal from any Judgment or Conviction by one or more Justices, where an Appeal to the [General] Sessions is given by Law : (to be paid out of the County funds, or by the party appealing, as the case may be) .....	0 25	0 25
68. When the Appeal called on, reading the Conviction, Notice of Appeal, and Recognizance : (to be paid out of the County funds, or by the party appealing, as the case may be).....	0 50	0 50
69. For all other Services upon the Trial of such Appeal case, when tried by a Jury, including the receiving and recording the Verdict (to be paid out of the County funds, or by the party,		

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# FEES OF CLERKS OF THE PEACE.

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| 0 20 | 70. Issuing Process to enforce the Order of the Court in any Appeal case: (to be paid out of the County funds, or by the party, as the case may be).....   | 1 00 | 1 00 |
|      | 71. Making out Warrant of Distress or Commitment, in any case where no fee is specially assigned therefor in any Statute, or in this Table ..  | 1 00 |      |
|      | 72. Drawing certificate of approval by the Justices in Sessions, of sureties tendered by the Sheriff; (to be paid by the Sheriff).....   |      | 0 50 |
|      | 73. Administering Oaths to any Public Officer, when authorized so to do: (to be paid by the Officer) .....   |      | 0 25 |
|      | 74. Receiving and filing each Oath of Qualification of a Justice of the Peace  | 0 25 |      |
| 0 25 | 75. All Letters written to the Government, all Letters written by direction of the Chairman, or of the Justices in Sessions [or Board of Audit], to Justices, Coroners, or Constables, or others, upon special business connected with the Administration of Justice, or County purposes ..... | 0 25 |      |
| 0 50 | 76. For distributing the Statutes to the Justices and County Officers, or others, when directed by the Statute or the Government so to do, and taking receipts therefor from each Justice or Officer.....  | 0 10 |      |
|      | 77. For accounting to the County Member for the copies of Statutes not called  |      |      |

U. W. O. LAW

## FEES OF CLERKS OF THE PEACE.

	To be paid out of the County Funds.	To be paid by the party applying.
	\$ Cts.	\$ Cts.
for by the Justices and County Officers, and delivering the same to him, when- ever such duty shall be required by Statute, or by the Government—and no other fee allowed.....	1 00	
78. For procuring and supplying to Clergy- men and Ministers all Books and Forms required under [ <i>R. S. O. c. 124</i> , <i>s. 17</i> ], for each Book with the necessary set of Forms .....	0 25	
79. For forwarding the Returns directed by the Census Act, Consol. Stat. Can., ch. 23, annually .....(a)	0 50	
80. For receiving and filing Voters' Lists under <i>R. S. O. c. 9</i> , ss. 11-12, each list (b)	0 25	
80a. For receiving and filing Voters' Lists under the Election Law, Con. Acts Can. <i>c. 6, s. 6, sub-sec. 2</i> , each list.....	0 25	
81. For attending and producing before County Judge the Duplicate List, when required by the Judge to do so, under sub-sec. 8 of the same.....(a)	0 50	
82. For filing each List, Return, or other Paper, where no charge is specially provided for, except Accounts and Claims against the County, and papers connected with matters to be charged against private individuals: (to be paid out of the County funds, or by the party for whom the service is ren- dered, according to the nature of the case) ... ..(c)	0 08	0 08

(a) This item is omitted in *R. S. O. p. 897*.

(b) This item is numbered 79 in *R. S. O.*

(c) This item is numbered 80 in *R. S. O.*

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FEES OF CLERKS OF THE PEACE.

*Prescribed by 33 Vict. c. 10 (O.), for services in County Judge's Criminal Court. (See R. S. O. p. 897.)*

Attending and service in Court, and making all necessary entries, for each prisoner brought before the Judge, and not consenting to be tried, in all .....	\$0 50
For attendance in Court, and services rendered at trial, making necessary record of proceeding and all necessary entries, including calendar of conviction for each prisoner.....	2 00
Preparing Judge's Warrant to bring up body of prisoner, and delivering the same to Sheriff, for each prisoner .....	0 50
Issuing Writ of Summons to witness, when necessary	0 40
Copy of Summons, each .....	0 20
Warrant of Remand, when issued and delivered to Sheriff .....	0 50
For Warrant to Arrest, taking and estreating recognizances, and proceedings to enforce same, (the same fees as allowed for the like services at the General Sessions of the Peace.)	

U. W. O. LAW



# TABLE OF COSTS

## FOR THE

### COUNTY COURTS IN ONTARIO.

(23 C. P. 400.)

JANUARY 5TH, 1874.

Tariff of C. C.  
costs.

Whereas it is provided by the "Common Law Procedure Act" that the Judges of the Superior Courts of Common Law at Toronto, or any three of them, (of whom one of the Chief Justices shall be one,) may from time to time frame a Table of Costs for the several County Courts, and ascertain, determine, declare and adjudge, all and singular the fees allowed to be taken by Counsel, Attorneys, Sheriffs, Coroners, and officers of the said County Courts respectively, in all matters, causes, and proceedings depending in the said Courts or before the Judges thereof, in all actions and proceedings within the jurisdiction of such County Courts, or of the Judges thereof, and that the Judges so framing or altering such Table of Costs may associate with them, in framing or altering such Table, any one of the County Court Judges appointed to "The Board of County Judges" under the "Division Courts Act."

And whereas the Chief Justice of Ontario, the Chief Justice of the Court of Common Pleas and the Judges of the Superior Courts of Common Law, at Toronto, have assumed the duties so provided for and in the exercise of the powers given as aforesaid, associated with them in the performance thereof James Robert Gowan, Senior Judge of the County Court of the

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County of Simcoe, and Chairman of "the Board of County Judges."

In pursuance, therefore, of the powers contained in the said "Common Law Procedure Act," the following Table of Costs for the said several County Courts in Ontario has been framed by the said Chief Justices and Judges, and it is determined, declared, and adjudged, that from and after the 1st day of March next all and singular the costs and fees mentioned in the said Table, and no other or greater, shall be allowed in taxation, or taken, or received, by any Counsel or Attorney, Sheriff, Coroner or officer, respectively, in the said County Courts, for any business by them, respectively, to be done or transacted in the said County Courts, or before the Judges thereof.

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## TABLE OF COSTS.

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GENERAL ALLOWANCE FOR PLAINTIFFS AND DEFENDANTS, AS WELL BETWEEN ATTORNEY AND CLIENT, AS BETWEEN PARTY AND PARTY.

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### TO THE ATTORNEY.

#### WRITS.

Summons, including attendance .....	\$1 00	Tariff of C. C. costs.
Concurrent Summons .....	0 75	
Renewed Summons .....	0 75	
Capias .....	1 00	
Concurrent Capias .....	0 75	
Renewed Capias .....	0 75	

U.W.O. LAW

## COUNTY COURT TARIFF.

Capias ad Satisfaciendum .....	1 00
Renewed Capias ad Satisfaciendum .....	0 75
Capias ad Satisfaciendum for the residue .....	1 00
Renewed do. do. ....	0 75
Fieri Facias .....	1 00
Renewed Fieri Facias .....	0 75
Concurrent Fieri Facias .....	0 75
Fieri Facias for the residue .....	1 00
Renewed do .....	0 75
Special Endorsement of Demand on Writ of Summons.	0 75
Writs of Revivor and Attachment, each .....	1 00
Subpœna ad Testificandum .....	0 50
Subpœna Duces Tecum .....	0 75
(and if above four folios, additional per folio 10 cents.)	
Venditioni Exponas .....	1 00
All other writs necessary .....	1 00

NOTE.—The above allowance includes all charges for attendance for the Writ, and delivering it to the officer.

For each copy including copies of all notices required to be endorsed .....	0 50
Service of each Copy of Writ, if not done by the Sheriff or an officer employed by him, when taxable to the Attorney .....	0 25
Mileage per mile for the distance actually and necessarily travelled, when taxable to the Attorney....	0 10

## INSTRUCTIONS TO THE ATTORNEY.

Taking instructions to sue or defend .....	2 00
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*Instructions for Pleadings :*

Instructions for Special Affidavits when allowed by the Clerk, and instructing Counsel on Special matters	0 50
Instructions to Counsel in Common matters .....	0 25
Do. for Brief .....	1 00
Do. for every suggestion .....	0 50
Do. for issue of fact by Consent .....	0 75

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# COUNTY COURT TARIFF.

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1 00	Instructions for suggestion to revive, or for writ of	
0 75	revivor, when no rule necessary.....	0 50
1 00	Do. for rule for writ of revivor, when necessary	0 50
0 75	Do. to defend Executor, after suggestion of	
1 00	death of original defendant .....	0 50

## DRAWING PLEADINGS, &c.

1 00	Declaration .....	1 00
0 75	If above ten folios, for every folio above ten, in addi-	
0 75	tion (but in no case to exceed \$2.00 for whole	
1 00	declaration) .....	0 20
0 50	One or more Pleas, if five folios or under .....	0 75
0 75	If above five folios, for every folio in addition (but in	
	no case to exceed \$1.50 for pleas).....	0 20
1 00	Joinder of Issue, inclusive of copies and engrossing..	0 25
1 00	Demurrer .....	0 50
	Joinder of Demurrer, inclusive of copies and engross-	
	ing .....	0 25
	Marginal statement of matters of Law for argument,	
	exclusive of copy for the Judge .....	0 50
0 50	Replications, new Assignment, and other Pleadings,	
	the same as the foregoing charges for Pleas .....	
	Postea, including engrossing .....	0 50
0 25	Judgment, whether by default, or final .....	0 50
	Authority to receive money out of Court.....	0 25
0 10	Suggestions, Pleas to Suggestions, and subsequent	
	Pleadings, inclusive of engrossment .....	0 50
	Issue for the trial of fact by agreement, for every folio	0 20
	Special Case, per folio.....	0 20
2 00	Drawing Interrogatories, or answer, for any purpose	
	required by Law, including engrossing, per folio ..	0 20
	Particulars of Demand, or set off .....	0 50
	Special Particulars of do per folio.....	0 20
0 50	Bill of Costs.....	0 50
0 25	Copy for the opposite party, each .....	0 25
1 00	Taking Cognovit, and entering Judgment thereon,	
0 50	where there has been no previous proceeding, and	
0 75	the true debt does not exceed \$200 .....	8 00

U. W. O. LAW

## COUNTY COURT TARIFF.

For the same services where the true debt exceeds \$200	10 00
Drawing and engrossing Cognovit, and attending execution, where there have been previous proceedings..	0 75
Instructions for Pleadings in Suit.....	1 00
Replication accepting money out of Court in full of demand .....	0 50
Every necessary Letter in the business of the cause..	0 25

## COPIES.

Declaration, when not exceeding ten folios, each....	0 75
Do. above ten folios, per folio (but not to exceed \$1.00) .....	0 10
Pleadings before enumerated.....	0 40
Issue (Pleadings) if ten folios or under.....	1 00
If above ten folios, for every folio.....	0 10
All proceedings, interrogatories, answers, and other papers of which copies are to be delivered, per folio.	0 10
Judgment for non-appearance on specially endorsed Writs, or Writs of Revivor, and in Ejectment, to be taken as ten folios, including the Writ.	

## COPY AND SERVICE.

Of Special and Common Rules .....	0 50
Of Special Rules, above three folios, per folio additional .....	0 10
Of Summons, or Order, of a Judge.....	0 25
Of Order to charge a prisoner in execution .....	0 50

## NOTICES INCLUDING COPY.

To declare, reply, and subsequent proceedings .....	0 25
By Defendant, to bring issue to trial .....	0 25
Of Appearance, when Appearance duly entered and notice given on the day of Appearance, but not otherwise .....	0 25
Of Appearance to Writ of Revivor. ....	0 25
To Plead .....	0 25
Of Declaration, when necessary.....	0 25

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# COUNTY COURT TARIFF.

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0 00	To Sheriff to discharge a Prisoner out of custody ..	0 50
	Notice in Ejectment to defend for part of premises ..	0 50
0 75	Notice of Claimant's or Defendant's title, same fees.	
1 00	Of Trial, or Assessment.....	0 25
	Demand of residence of Plaintiff, and all other common	
0 50	notices, each .....	0 25
0 25	To admit, or produce, if not exceeding two folios....	0 25
	For each folio above two .....	0 10

## ATTENDANCES.

0 75	Attendance at Judges' Chambers .....	0 50
	Attorney attending Court when not himself Counsel,	
0 10	or partner of Counsel .....	1 00
0 40	Attendance on Clerk in Special matters .....	0 50
1 00	Do.     do.     ascertaining amount due plain-	
0 10	tiff by a British subject under order of a Judge ..	1 00
	For every hour after the first .....	0 50
0 10	Taxation of costs on Postea .....	1 00
	Do.     on Judgment otherwise than on Postea....	0 40
	Attendance to file or to serve, to give or receive	
	undertaking to appear, when service of process	
	accepted by Attorney, and all other necessary	
	attendances, each .....	0 25

## BRIEFS.

0 50	For Drawing Brief not exceeding five folios.....	1 00
0 10	Do.     for each folio in addition .....	0 10
0 25	Do.     per folio of original and necessary	
0 50	matter .....	0 20
	Copies of documents other than Pleadings, when	
	required, per folio .....	0 10

## TERM FEES, AND OTHER FEES.

0 25	Term Fee after Declaration filed .....	0 50
0 25	Fee on every Record .....	0 50
0 25	Do.     Rule of Court, or Judge's order .....	0 50
0 25	Do.     Attending by Counsel, or Attorney, to	
0 25	hear Judgment of Court, when Attend-	
0 25	ance is noted by Clerk at the time,	
	and is necessary .....	1 00

U. W. O. LAW

## AFFIDAVITS.

Drawing Affidavit per folio, special .....	0 20
Copies of Affidavits when necessary, per folio .....	0 10
Common Affidavits of service, when necessary, or of payment of mileage, including oath .....	0 70
Mileage on services, as on writs of summons .....	

## DEFENDANTS.

Appearance .....	0 50
For each additional Defendant .....	0 20

## COUNSEL FEES.

Fee on motion of course, or on motion for Rule Nisi, or on motion to make rule absolute, in matters not special .....	1 00
On Special motion for Rule Nisi (only one Counsel fee to be taxed) .....	3 00
To be increased to \$5.00 in the discretion of the Judge.	
To attend Reference to Clerk, when Counsel necessary in opinion of the Judge .....	3 00
On revising Pleadings, or Interrogatories, or settling or revising special cases, when necessary, in the dis- cretion of the Judge, who shall certify the amount to be taxed before taxation, not exceeding .....	2 00
Advising on evidence in contested cases, in discretion of the Judge as above, a sum not exceeding .....	3 00
Fee on Argument on supporting or opposing Rules, on return of Rule Nisi, or argument of Demurrer, or special case .....	5 00
To be increased by Judge in his discretion to a sum not to exceed \$10.00.	
Fee with Brief on Assessments .....	4 00
Do. do. do. at Trial .....	\$6 to 10 00
To be increased by order of a Judge in his discretion to a sum not to exceed \$20.00.	
Fee to Counsel, when Counsel attend on argument, or examination in Chambers, when in opinion of Judge attendance of Counsel is necessary .....	1 00

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To be increased by order of Judge in his discretion  
to a sum not to exceed \$4.00.

Drawing Bond on Appeal, or Bond for Security for  
Costs ..... 3 00

Drawing Bail Piece ..... 1 00

In all applications and proceedings before the County  
Judges, not relating to Suits instituted in any Court  
of Civil Judicature, there shall be payable to the  
Attorney and Counsel the same fees as in the fore-  
going Table, so far as the same are applicable.

## FEES.

TO BE TAKEN AND RECEIVED BY THE CLERKS OF THE SEVERAL  
COUNTY COURTS FOR THEIR SERVICES.

Every Writ, Mesne and Final (except subpoena for which 25c.).....	0 40
Every Concurrent, Alias, Pluries, or Renewed Writ,	0 40
Every appearance entered, and filing Memorandum thereof.....	0 15
Every appearance, each Defendant after the first....	0 10
Filing every Affidavit, Writ, or other proceeding, or paper .....	0 10
Amending every Writ, or other proceeding, or paper	0 25
Every ordinary Rule .....	0 30
Every special Rule, when prepared by the Clerk....	0 40
Every Judgment by Default .....	0 30
Every Final Judgment .....	0 50
Taxing every Bill of Costs, and giving Allocatur.....	0 80
Every Reference, Inquiry, Examination, or other special matter referred to the Clerk, for every meeting not exceeding one hour .....	0 75
Do. do. for every additional hour or less.....	0 50
For every Report made by the Clerk upon such refer- ence, &c. ....	1 00
Upon Payment of Money into Court, for every sum under \$200.....	1 00
Do. \$200 and over .....	2 00

U. W. O. LAW



Every Certificate required from Clerk, and given . . .	0 50
Exemplification, or Office Copy of Proceedings, per folio	0 10
Every Search, if within one year . . . . .	0 10
Every Search, if over one year and within two years	0 20
Every Search, over two years, or a General Search in one cause. . . . .	0 50
Every Affidavit, Affirmation, or Oath administered by Clerk . . . . .	0 20
Entering Satisfaction on Record, and filing Satisfac- tion piece. . . . .	0 30
Every Commission for the Examination of Witnesses	0 50
Entering Exoneretur on Bail Piece . . . . .	0 20
For making the Entry required in the debt Attach- ment Book, and in Cognovit Book, each . . . . .	0 50
Every Record entered in the Sittings Docket, includ- ing Records from the Superior Courts . . . . .	0 50
Every Verdict taken, Nonsuit, Jury discharged, or Record withdrawn . . . . .	0 50
Every Rule or Order of Reference at the trial. . . . .	0 50
Drawing Appointments made by Judge. . . . .	0 25
For Judge's Summons or Fiat, except Fiats for costs, speedy execution, or increased Counsel Fee. . . . .	0 25
Judge's Order. . . . .	0 40
For attending at every Special Hearing before the Judge, under the 158th section of "The Common Law Procedure Act," and at taking Examination and Evidence, and at Sittings on references to the County Judge from the Superior Courts, not exceeding one hour . . . . .	0 50
Every additional hour or less. . . . .	0 50
Every Enlargement on Application to Judge in Cham- bers, or on Return of Summons or otherwise, includ- ing search if marked by Clerk . . . . .	0 15
Every Appointment for Taxation of Costs or other- wise, made by Clerk . . . . .	0 10
For every Meeting upon Reference under 161st sec- tion of "The Common Law Procedure Act," (a.) not exceeding two hours . . . . .	0 20

(a.) See now R. S. O. c. 50, s. 197.

# COUNTY COURT TARIFF.

611

For each additional hour or less.....	1 00
(To be taxed by the Judge.)	
For ascertaining the Amount due by Defendant to Plaintiff, when Judgment signed under Order of any Judge, against a British subject out of Jurisdiction in default of Plea .....	1 00
For every Jury sworn.....	0 30
In all Applications and Proceedings before the County Judges, not relating to suits instituted in any Court of Civil Judicature, there shall be payable to the Clerks the same Fees as in the foregoing Table, so far as the same are applicable.	

## SHERIFF.

Every warrant to execute any process, mesne or final, directed to the Sheriff, when given to a Bailiff.....	0 50
Arrest, when amount does not exceed \$200.....	2 00
Do. when amount is over \$200.....	4 00
Bail Bond or Bond to the limits .....	1 00
Assignment of the same.....	0 25
Service of Process, non-bailable, Scire Facias, or Writ of Revivor (including affidavit of service) each defendant .....	1 00
No fee for affidavit of service to be allowed in such cases, unless service made, or recognized, by the Sheriff.	
Serving Declarations, Subpoenas, Rules, Notices, or other papers (besides mileage) .....	0 40
(for each additional party served 25c.)	
Receiving, Filing, entering and endorsing all Writs, Declarations, Rules, Notices or other papers, each	0 10
Return of all Process and Writs except Subpoena...	0 25
Return of all Declarations, Rules, Notices or other papers	0 15
Every search not being by a party to a cause or his Attorney .....	0 30
Certificate of result of such search for each party when required.....	0 75

A search for a Writ against lands of a party, shall include, sales under Writ against same party, and for the then last six months.

U. W. O. LAW

Notice of appointment for ballot of Jury .....	0 25
Notice to Clerk of Peace of such appointment .....	0 25
Fee on balloting Special Jury .....	2 50
Fee on striking do .....	1 25
Serving each Special Juror (besides mileage at 13 cents per mile) .....	0 25
Returning Panel of Special Jurors .....	0 50
Keeping, and Checking, Pay Lists of Special Jurors' attendance in each case .....	1 00
Every Jury sworn, or cause tried before a Judge....	0 89
Poundage on Executions, and on Attachments in the nature of Executions, upon the sum made in the \$ five per cent., exclusive of mileage for going to seize and sell, and except all disbursements necessarily incurred in the care and removal of property (a) .....	
Schedule of Goods taken in Execution, Attachment, or other Process, including copy to Defendant, not to exceed five folios .....	0 50
Each folio above five .....	0 10
Drawing Advertisements when required by Law to be published in the <i>Official Gazette</i> or other newspaper, or to be posted up in a Court House or other places, and transmitting same in each suit ..	0 75
Every necessary Notice of Sale of Goods in each suit.	0 40
Every Notice of Postponement of Sale in each suit..	0 20
The sum actually disbursed for advertisements required by Law to be inserted in the <i>Official Gazette</i> or other newspaper.	
Executing Writ of Possession, and serving and executing Writ of Restitution, besides mileage .....	2 00
Bringing up Prisoner on Attachment, besides travel at 20 cents per mile .....	1 00
Actual and necessary mileage from the Court House to the place where service of any process, paper, or proceeding, is made, per mile .....	0 13

(a.) *Fleming v. Hall*, 9 P. R. 310; *Morrison v. Taylor*, 9 P. R. 390; *Grant v. Grant*, 10 P. R. 40.

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# COUNTY COURT TARIFF.

613

0 25	Seizing Estate and Effects on Attachment against an	
0 25	absconding Debtor .....	1 50
2 50	Removing or Retaining Property, reasonable and	
1 25	necessary disbursements and allowances to be made	
	by order of the Court or a Judge .....	
0 25	Presiding or attendance on Execution of Writ of	
0 50	Enquiry, or other Writ of a like nature per day ..	4 00
	Summoning each Juror in such case .....	0 50
1 00	Bailiff's Fee, Summoning Jury, per mile .....	0 13
0 80	Hire of Room, if actually paid, not to exceed \$2 per	
	day .....	
	Mileage from the Court House to the place where	
	Writ executed, per mile.....	0 13
	Drawing Bond to secure Goods taken under an Attach-	
	ment against an absconding debtor, if prepared by	
	Sheriff .....	1 50
	Every Letter written (including Copy) required by	
	Party or his Attorney respecting Writs or Process,	
0 50	when postage pre-paid .....	0 30
0 10	Drawing every Affidavit when necessary and prepared	
	by the Sheriff .....	0 25
	Precept on Warrant to Bailiff on Replevin .....	0 40
	Drawing Notice for Service on Defendant on Replevin	0 40
0 75	Delivering Goods to the party obtaining the Replevin	
0 40	Writ .....	1 50
0 20	For Writ, &c., De Retorno Habendo... ..	0 50
	Drawing Replevin Bond .....	1 00
	All necessary disbursements for the possession, care	
	and removal of Property taken in Replevin.....	

## CORONERS.

2 00	The same Fees shall be taxed and allowed to Coroners	
1 00	for services rendered by them in the service, execu-	
	tion, and return, of process, as allowed to Sheriffs for	
	the same services, and above specified.	

## CRIER.

0 13	Calling every case, with or without Jury.....	0 50
P. R.	Swearing each witness or constable .....	0 15

U. W. O. LAW

## COUNTY COURT TARIEFF.

## ALLOWANCE TO WITNESSES.

To Witnesses residing within three miles of the Court House, per diem .....	1 00
To Witnesses residing over three miles from the Court House .....	1 25
Barristers and Attorneys, Physicians and Surgeons, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem .....	4 00
Engineers and Surveyors, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per diem .....	4 00
If the Witnesses attend in one cause only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each cause only.....	
The travelling expenses of Witnesses, over ten miles shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed one shilling per mile, one way .....	

## COMMISSIONER.

For taking every Affidavit.....	0 20
Taking every Recognizance of Bail .....	0 50

WM. B. RICHARDS, C. J.  
 JOHN H. HAGARTY, C. J. C.P.  
 JOS. C. MORRISON, J.  
 ADAM WILSON, J.  
 THOMAS GALT, J.  
 JAS. ROBT. GOWAN, Co. J.

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# RULES OF COURT

FOR THE

## TRIAL OF CONTESTED MUNICIPAL ELECTIONS, AND TARIFF OF FEES.

IN THE COURTS OF QUEEN'S BENCH, AND COMMON PLEAS.

MICHAELMAS TERM, 14TH VICTORIA.

WHEREAS, by an Act passed by the Parliament of this Province in the twelfth year of Her Majesty's reign (cap. 81), entitled, "An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships, and Villages in Upper Canada," power was given to Her Majesty's Court of Queen's Bench in Upper Canada, and the several Judges thereof, to try and decide all matters relating to contested Municipal Elections as therein provided; and whereas, by the Act of the last session of Parliament (chapter 64), entitled, "An Act for correcting certain errors and omissions in the Act of Parliament of this Province, passed in the last session thereof, entitled "An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada, for amending certain of the provisions of the said Act, and making some further provisions for the better accomplishment of the object thereof," the powers conferred on the said Court and Judges have been extended to the Court of Common Pleas and the Judges thereof, and additional powers have been thereby given in the premises to the said Courts and Judges respectively; and it being, among

Rules, regulating trial of contested municipal elections

U. W. O. LAW

other things, in effect enacted, that it should and might be lawful for the Judges of Her Majesty's two Superior Courts of Common Law at Toronto, or the majority of them, by any Rule or Rules to be by them for that purpose made, from time to time in Term time, as occasion may require, to settle the forms of all such writs, whether of summons, *certiorari*, *mandamus*, execution, or of or for whatever other kind or purpose, as are authorized by the said Act. Therefore, in order to settle the said forms, and to regulate the practice and proceedings in the said Courts in the matter aforesaid,

IT IS ORDERED, that the following Rules be substituted for the Rules made in Hilary Term last, by the Judges of the said Court of Queen's Bench, for the trial of such elections; and that the forms of such writs, and the practice to be observed with respect to the matters aforesaid, shall be as follows, that is to say:—

These Rules were passed under the provisions of 12 Vict. c. 81, s. 146, and 13 & 14 Vict. c. 64, since their promulgation these Statutes have been repealed and the *Municipal Institutions Act* has from time to time been amended and consolidated. The last Act, 46 Vict. c. 18, (1883,) which amended and consolidated the pre-existing Statutes respecting Municipal Institutions, provides in s. 206 that "the Judges of the High Court of Justice, or a majority of them may by Rules settle the forms of the writs of summons *certiorari*, *mandamus*, and execution under this Act, and may regulate the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same, or any other writ, or order of the Court or Judge, and respecting the practice generally, in hearing and determining the validity of such elections or appointments, and respecting the costs thereon; and may from time to time rescind, alter, or add to, such Rules; but all existing Rules shall remain in force until rescinded or altered as aforesaid."

Under this section, the following Rules continue in force, and regulate the practice in reference to controverted municipal elections.

1. The relator entitled to complain of any election shall in person or by attorney, by written motion, apply to one of the said Courts of Queen's Bench, or Common Pleas, in Term time, or to the Judge presiding in Cham-

Rules continued  
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bers in vacation, for a writ of summons in the nature of a quo warranto, which motion must, according to the statute, be made within six weeks after the election complained against, or within, one month after the person whose election is questioned shall have accepted the office, and not afterwards.

Time for moving

**The Relator.**—The relator is the person upon whose application the jurisdiction of the Court is put in motion. Relator—who may be

Under "*The Consolidated Municipal Act, 1883, (46 Vict. c. 18 (O.))* s. 185, *any municipal elector in the county* may be the relator in a case where the right of any municipality to a Reeve, or Deputy Reeve, or Reeves, is in question, (see 46 Vict. c. 18, ss. 69-71). When the question is as to the validity of the election of any Mayor, Warden, Reeve, Deputy Reeve, Alderman, or Councillor, then *any candidate* at the election, or *any elector who gave, or tendered his vote thereat*, is qualified to be a relator: and if the contest be concerning the validity of an appointment by the members of the council of a municipality of any member of their body; (see 46 Vict. c. 18, s. 184.) then *any member of the council, or any elector of the ward*, or if there is no ward, then *any elector of the municipality* for which the appointment was made, may be the relator.

A voter of another ward if he desire to complain of an election cannot proceed in a summary manner under s. 185, but must file an information in the nature of a quo warranto: *Regina ex rel. Coleman v. O'Hare*, 2 P. R. 18; see also, *Regina ex rel. Hart v. Lindsay*, 18 U. C. Q. B. 51; *Regina ex rel. Clancy v. St. Jean*, 46 U. C. Q. B. 77.

As to who is to be deemed a candidate; see *Combe v. Pitt*, 3 Burr. 1590; *Morris v. Burdett*, 1 Camp. 218; S. C. 2 M. & S. 216; *Muntz v. Sturge*, 8 M. & W. 310; Harrison's Munl. Manl., (4th ed.) 130. Candidate—definition of.

It is not necessary in order to constitute a person a "candidate" so as to qualify him to be a relator, that he should be actually nominated at the election, where his actual nomination has been prevented by the misconduct of the Returning Officer: *Regina ex rel. Corbett v. Jull*, 5 P. R. 41. But if after being nominated, he, with the consent of his proposer and seconder, withdraw, he ceases to be a candidate: *Regina ex rel. Coyne v. Chisholm*, 5 P. R. 328; and see *Regina ex rel. Harris v. Bradburn*, 6 P. R. 308. One whose nomination prevented, may protest election.

A relator who was a candidate need not, in his application to oust the defendant, show that he himself is qualified for the office: *Regina ex rel. Mitchell v. Adams*, 1 C. L. Ch. R. 203. A candidate withdrawing ceases to be a candidate.

If the interest of a relator is denied by the defendant on grounds assigned, then he must establish his interest: *Regina ex rel. Bartliffe v. O'Reilly*, 8 U. C. Q. B. 617. Relator who was a candidate need not establish his own qualification

Interest of relator must be proved if denied.

U.W.O. LAW



**Electors**—who qualified to be.

**Elector cannot** dispute validity of election of a candidate for whom he voted, unless ignorant of objection he wishes to urge.

**Seat may be** awarded to one who voted for the party when election set aside.

**No contest can** be entertained where the election is by acclamation.

**Acquiescence in** an irregular election—effect of.

**Quo warranto** by one relator may be set aside at the instance of another when first proceedings collusive.

**Costs**—liability of a relator for.

**Information,** when necessary to be filed.

As to who are qualified to be electors: see 46 Vict. c. 18, ss. 79-87. An elector who has been instrumental in electing a candidate will not be permitted to dispute the validity of the election of that candidate: *Regina ex rel. Pomeroy v. Watson*, 1 U. C. L. J. 48; *Regina ex rel. Loyall v. Ponton*, 2 P. R. 18; *Regina ex rel. Rosebush v. Parker*, 2 C. P. 15; *Kelly v. Macarow*, 14 C. P. 457; *Regina ex rel. Grayson v. Bell*, 1 U. C. L. J., N. S. 130; *Regina ex rel. Regis v. Cusac*, 6 P. R. 303; *Regina ex rel. Harris v. Bradburn*, *Ib.* 308, unless he can show that he was ignorant of the objection he desires to urge: *Regina ex rel. Coleman v. O'Hare*, 2 P. R. 18; nor can a Councillor who has been instrumental in the election of a person as Reeve, or Deputy Reeve, afterwards dispute the election: *Regina ex rel. Rosebush v. Parker*, 2 C. P. 15; but when his election is successfully disputed by a third party the seat may be awarded to an opposing candidate who voted for the defendant; *Regina ex rel. Clint v. Upham*, 7 U. C. L. J. 69. And when there is only one candidate, or set of candidates, who is, or are, in good faith elected by acclamation, no contest can be entertained under section 185: *Regina ex rel. Bugg v. Bell*, 4 P. R. 226. As to how far the acquiescence of a candidate in an irregular election disqualifies him from afterwards being a relator: see *Regina ex rel. Mitchell v. Adams*, 1 C. L. Ch. R. 203; *Regina v. Lofthouse*, 1 L. R. Q. B. 433. But the acquiescence of a candidate in an irregular election will not prevent a voter who was no party to such acquiescence from applying: *Re Charles v. Lewis*, 2 C. L. Ch. R. 171. But if a voter take part in an election he cannot be heard to say that it was wholly void: *Regina ex rel. McLaughlin v. Hicks*, 5 U. C. L. J. 89.

A *quo warranto* obtained by one relator may be set aside at the instance of another relator, on the ground of the first relator being in collusion with the defendant: *Regina ex rel. Patterson v. Vance*, 5 P. R. 334, but he cannot object to mere irregularities in the proceedings, unless he can show they were committed designedly to secure the failure of the proceedings; *Ib.*, and see *Rule 18 post*.

A relator is liable to be ordered to pay the costs of the defendant. An officer of the corporation may be a relator, but it is not desirable that he should be, and he may be refused costs even though successful: *Regina ex rel. McMullen v. DeLisle*, 8 U. C. L. J. 291; *Regina ex rel. Brine v. Booth*, 9 P. R. 452.

**Information, when necessary.**—In cases where the summary proceedings prescribed by section 185, cannot be taken to dispute the validity of an election to any public office, the question can only be determined upon an information in the nature of *quo warranto*. *E.g.* where the right of School Trustees to act as such is questioned, the regularity of their election can only be tested by information, and cannot be raised in any collateral proceeding. If, however, the

existence of trustees proceedings which is claimed seem the lawlor,

Where of qualification c. 18, ss. question ex rel. Cl

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**Motion** as required

For form

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existence of the power to form the school section for which the trustees assume to act is denied, that may be raised in a collateral proceeding: *Askew v. Manning*, 38 U. C. Q. B. 345. As to cases in which leave to file an information will be granted: see *Ib.* pp. 358 *et seq.* Where the election of the defendant is regular, but it is claimed that by a subsequent act he has forfeited his seat, it would seem that an information must be filed: *Regina ex rel. McGouerin v. Lawlor*, 5 P. R. 208.

Where the person elected has not made the requisite declaration of qualification before entering on the duties of his office (see 46 Vict. c. 18, ss. 72, 272) his right to exercise the office may be called in question upon an information in the nature of a *quo warranto*: *Regina ex rel. Clancy v. St. Jean*, 46 U. C. Q. B. 77.

Under 46 Vict. c. 18, ss. 189, 197, it would seem that a relator can now attack the whole of the members of the council in one proceeding.

Formerly it was held that a relator could not attack a municipal council by name, upon grounds which if sustained must necessarily lead to a dissolution of the body, nor could he attack the whole council in one proceeding, through the individual names of every member of it: *Regina ex rel. Lawrence v. Woodruff*, 8 U. C. Q. B. 336, but see *Rex v. Parry*, 6 A. & E. 810-820. Such an information, however would lie in the name of the Attorney General on behalf of the Crown: *Rex v. Carmarthen*, 2 Burr. 869; *Rex v. Ogden*, 10 B. & C. 230; *Regina v. Taylor*, 11 A. & E. 949. When the information is filed by the Attorney General, no leave of the Court is required, but when it is filed on behalf of some individual, then the leave of the Court must be obtained: 4 & 5 W. & M. c. 18 ss. 2, 6.

Where a relator can proceed under section 185, he will not be permitted to file an information: *Kelly v. Macarow*, 14 C. P. 313, 457; *Regina ex rel. White v. Roach*, 18 Q. B. 226; but see *Regina ex rel. Clancy v. St. Jean*, 46 U. C. Q. B. 77.

When the time for proceeding in a summary manner is suffered to elapse the relator will not be allowed to file an information in the nature of a *quo warranto*: *Regina ex rel. White v. Roach*, 18 U. C. Q. B. 226.

A summons under the Municipal Act, is not an appropriate proceeding to unseat a defendant who has forfeited his seat by an act subsequent to the election, where the election was legal: *Regina ex rel. McGouerin v. Lawlor*, 5 P. R. 208.

**Motion for summons.**—A written motion paper must be filed, as required by this Rule: *Regina ex rel. Telfer v. Allax*, 1 P. R. 214.

For form of motion paper see *post* p. 650.

To the motion paper must be annexed a written statement as required by Rule 2 *infra*, which must be signed by the relator: and

All members of a corporation may be attacked in one proceeding.

Formerly this could not be done.

Leave of Court to filing information, when necessary.

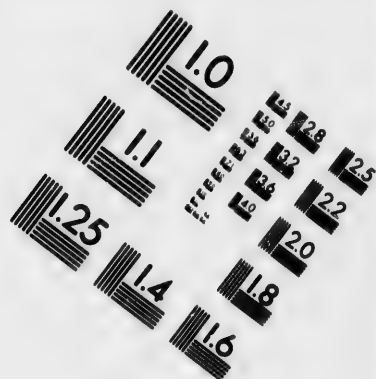
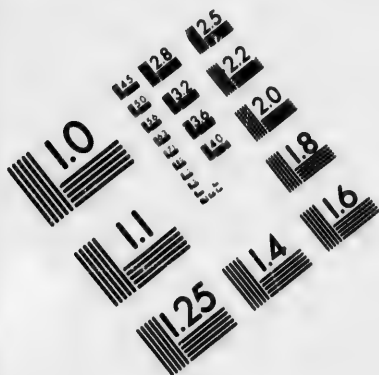
Relator able to proceed under summary procedure, will not be allowed to file an information.

When seat forfeited by an act subsequent to election,

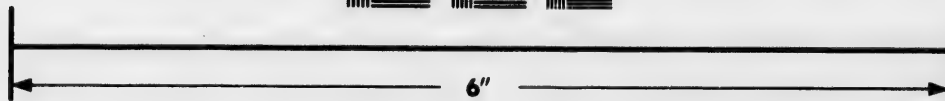
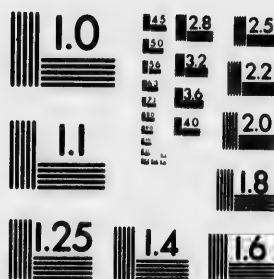
Motion for summons.

Statement to be annexed to the motion paper.

U. W. O. LAW



# IMAGE EVALUATION TEST TARGET (MT-3)



# Photographic Sciences Corporation

**23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503**

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an affidavit, or affidavits must also be filed as required by *Rule 2 infra*. The affidavit of the relator alone is sufficient to obtain the writ: *Regina ex rel. Carroll v. Beckwith*, 1 P. R. 278.

**Application to whom made.**

The application may be now made to any Judge of the High Court, or the senior or officiating Judge of the County Court of the County in which the election or appointment took place: 46 Vict. c. 18 s. 185, or to the Master in Chambers: *Rule S. C. 420*. Applications in Toronto in the High Court are now usually made to the latter officer: see *Regina ex rel. Haner v. Roberts*, 7 P. R. 315; *Regina ex rel. Brine v. Booth*, 9 P. R. 452; *S. C. 3 O. R. 144*; *Regina ex rel. Halsted v. Ferris*, 5 P. R. 241; *Regina ex rel. Hamilton v. Piper*, 8 P. R. 225.

When the Junior Judge of a County Court is officiating it would seem that he has jurisdiction to grant the summons: *Regina ex rel. McDonald v. Anderson*, 8 P. R. 241.

**Recognizance to be entered into by Relator and two sureties.**

The relator is also bound to enter into a recognizance of \$200 with two sureties in \$100 each, conditioned to prosecute the writ with effect, or to pay to the party against whom the same is brought any costs which may be adjudged to him against the relator: 46 Vict. c. 18, s. 185.

**Time for making the application.**

**Time within which application to be made.**—By 46 Vict. c. 18, s. 186, the application is to be made "within six weeks after the election, or one month after acceptance of office by the person elected." In computing the six weeks the day of the election is to be excluded: *Har. Mun. Man.*, (4th ed.,) 126-127. The month referred to is a calendar month: see *R. S. O. c. 1, s. 8, ss. 15*.

**How computed.**

*Rule 1* in so far as it requires that the application be made in Term time to the Court is now abrogated by the Statute: *Regina ex rel. McDonald v. Anderson*; 8 P. R. 241.

The acceptance of office is a formal acceptance by making the statutory declaration of qualification, and office, (see 46 Vict. c. 18, ss. 73, 272) and not a mere verbal acceptance by speech to the electors: *Regina ex rel. Clancy v. McIntosh*, 46 U. C. Q. B. 98.

In computing the calendar month the last day falls on the corresponding day in the ensuing month to that on which the acceptance of office took place: *Freeman v. Read*, 4 B. & S. 184-5, but if the acceptance take place on the 29th, 30th, or 31st January, the month ends on the last day of the ensuing month of February. Six weeks are allowed to impeach the election, although the office may have been accepted more than a calendar month. If the application be not made within six weeks after the election, it may still be made, if the office has not been accepted a calendar month by the person elected.

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2. Such motion shall be founded, first, on a written statement which shall be annexed to the motion paper, setting forth the interest which the relator has in the election, as candidate or voter, and setting forth also specifically, under distinct heads separately numbered (if there be more than one), all such grounds of objection as he intends to urge against the validity of the election complained against, and in favour of the validity of the election of the relator or another, or other person or persons, when he shall claim that he or they, or any of them, have been duly elected; and at the foot of such statement there shall be an affidavit, made and signed by the relator, that he believes such grounds to be well founded: and, secondly, on an affidavit or affidavits of the relator, or other person or persons, setting forth fully and in detail the facts and circumstances which shall support the application.

Statement of relator to be annexed to motion paper.

Affidavits required in support of application.

The statement of the relator may be after the following form *mutatis mutandis*:

## STATEMENT OF THE RELATOR. (a)

IN THE QUEEN'S BENCH (or COMMON PLEAS).

The statement and relation of —, of —, who, complaining that —, of — (here inserting the names and additions of all, if more than one person), hath (or have) not been duly elected, and hath (or have) unjustly usurped and still doth (or do) usurp the office of —, in the Town of — (or Township of —, as the case may be), in the County (or United Counties) of —, under the pretence of an election held on —, at —, in the said County (or United Counties) [and (when it is claimed that the relator, or the relator and another, and others ought to have been returned) that (here name the party or parties so entitled) was (or were) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a —, states and shows the following causes why the election of the said — to the said office should be declared invalid and void. [And (when so claimed) the said — (naming the party or parties) be duly elected thereto.]

Form of statement of relator.

(a) See form post No. 1, p. 648.

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*First*—That (for example) the said election was not conducted according to law, in this, that, &c.

*Second*—That the said — was not duly or legally elected or returned, in this that, &c.

*Third*—That, &c.

Signed by the relator in person, or by C. D. his attorney.

**NOTE**—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

When seat claimed on ground of disqualification of defendant, evidence required that notice of disqualification of defendant was given to electors.

When the seat is claimed by the relator himself, or for some other person, on the ground of the disqualification of the party elected, it is necessary to show that the electors were duly notified at the nomination: *Regina ex rel. Tinning v. Edgar*, 4 P. R. 36, of the alleged disqualification. Where this is not shown, even though the disqualification be established, a new election will be ordered: *Regina ex rel. Hervey v. Scott*, 2 C. L. Ch. R. 88; *Regina ex rel. Richmond v. Tegart*, 7 U. C. L. J. 128; *Regina ex rel. Fanaghan v. McMahon*, Ib. 155; *Regina ex rel. Dexter v. Gowan*, 1 P. R. 104; *Regina ex rel. Adamson v. Boyd*, 4 P. R. 204; *Regina ex rel. Ford v. McRae*, 5 P. R. 309. In order merely to set aside the election it is not necessary to show that notice of the disqualification was given: *Regina ex rel. Coleman v. O'Hare*, 2 P. R. 18. When the relator claims to have been elected at the nomination owing to the defendants' disqualification, his subsequent going to the poll waives such right: *Regina ex rel. Forward v. Dettlor*, 4 P. R. 198.

Discretion of Judge as to awarding seat.

It would seem to be a matter of discretion with the Judge whether or not he awards the seat to the relator, which cannot be interfered with on appeal, assuming that there can now be any appeal at all, (see 46 Vict. c. 18, s. 205); *Regina ex rel. Clark v. McMullen*, 9 U. C. Q. B. 467.

Property qualification, how estimated.

In estimating the property qualification required by a candidate under 46 Vict. c. 18, s. 73, the amount of mortgages upon the property must be deducted from the assessed, and not from the real value: *Regina ex rel. Kelly v. Ion*, 8 P. R. 432; and see *Regina ex rel. Brine v. Booth*, 9 P. R. 452; 3 O. R. 144; *Regina ex rel. Clancy v. McIntosh*, 46 U. C. Q. B. 98. The accuracy of the assessment roll cannot be controverted on such an application: *Regina ex rel. Hamilton v. Piper*, 8 P. R. 225.

Writ may be refused, when objection to election has not contributed to improper result.

When the mistake or irregularity complained of by the relator, has in no way contributed to any improper result, the Judge may properly refuse the writ: *Regina v. Ward*, 8 L. R. Q. B. 210; *Regina v. Cousins*, Ib. 216; *Regina ex rel. Grayson v. Bell*, 1 C. L. J. N. S. 130; and see *Regina ex rel. Halsted v. Ferris*, 5 P. R. 241.

Proceedings are not to be set aside or held void on account of any irregularity or defect which shall not in the opinion of the Judge interfere with the just trial or adjudication of the case on the merits : *Rule 18 post.*

Technical objections.

Where after a defendant has been served with the summons, but before he has appeared the relator finds his proceedings are irregular or defective, he may notify the defendant not to appear, and abandon his proceedings, and commence *de novo* provided the time allowed for commencing his proceedings has not expired : *Regina ex rel. Metcalfe v. Smart*, 10 U. C. Q. B. 89.

Abandonment of proceedings by relator.

The relator is not permitted at the hearing to take objections not specified in the statement on which the summons is moved : see *Rule 9 post* but, the Judge may in his discretion entertain upon his own view of the case any substantial ground, or objection to, or in support of, the validity of the election of either, or any, of the parties which may appear on the evidence : *Ib.*

Objections not taken in statement.

Where the allegation in the statement was that the relator "had an interest in the said election as a voter," and his affidavit stated that he had voted "on the said election, but not for the said William Rastal," it was held to be sufficient : *Regina ex rel. Ross v. Rastal*, 2 C. L. J., N. S. 160. A relator is not necessarily bound to prove his interest, unless it is expressly denied by the defendant : *Regina ex rel. Bartliffe v. O'Reilly*, 8 U. C. Q. B. 617 ; *Regina ex rel. Pomeroy v. Watson*, 1 U. C. L. J. 48 ; *Regina ex rel. Campbell v. O'Malley*, 10 C. L. J., N. S. 250 ; *Regina ex rel. Shaw v. Mackenzie*, 2 C. L. Ch. R. 36 : the issue of the writ does not establish the interest of the relator if denied, *Ib.* But the interest of the relator should be distinctly stated in the statement : *Regina ex rel. White v. Roach*, 18 U. C. Q. B. 226 ; and see *Regina ex rel. Ross v. Rastal*, 2 C. L. J. N. S. 160, but where the fact appears by the affidavit, but the allegation is omitted from the statement the latter may be amended : *Regina ex rel. O'Reilly v. Charlton*, 6 P. R. 254.

Statement of relator.

Interest of relator.

Amendment of Statement when allowed.

When the interest of the relator as an elector is denied, the proper proof of his right, is the production of the roll, or an authenticated copy : *Regina ex rel. Campbell v. O'Malley*, 10 C. L. J., N. S. 250.

Proof of relator's interest.

The statement of the relator must be signed ; and it was held that the affidavit of the relator indorsed that he believed the objections within stated to be well founded was not sufficient to dispense with his signature : *Regina ex rel. Telfer v. Allan*, 1 P. R. 214 ; but see *Rule 18 post.*

Statement of relator to be signed.

According to this *Rule* there must be at least two affidavits ; the one of the relator to be appended to the foot of the statement, to the effect that he believes the grounds mentioned in the statement to be well founded ; the other an affidavit of the relator, or some other person, setting fourth fully in detail the facts and circumstances

Affidavits required in support of application.

U.W.O. LAW



which support the application. The affidavit of the relator alone was held sufficient to obtain the writ, even before the act enabling him to be a witness in his own behalf: *Regina ex rel. Carroll v. Beckwith*, 1 P. R. 278.

The affidavit sustaining the relator's case need not necessarily state that the defendant has accepted or acted in the office: *Regina ex rel. Helliwell v. Stephenson*, 1 C. L. Ch. R. 270. But when alienage is the objection relied on by a relator it must be shown particularly how the parties complained of are aliens; a general affidavit of the fact was held insufficient: *Regina ex rel. Carroll v. Beckwith*, 1 P. R. 278.

Entitling affidavit of relator.

When the affidavit of the relator, though not entitled in any Court, followed and referred to his statement which was properly entitled, it was held sufficient, and an objection that the recognizance was not entitled in any Court was disallowed on similar grounds: *Regina ex rel. Bland v. Figg*, 6 U. C. L. J. 44; but see *Hirons v. Amherstburgh*, 11 U. C. Q. B. 458

Court or Judge may issue a summons in the nature of a *quo warranto*.

Recognizance to be entered into by relator and sureties.

Writ to be sealed &c., and copy of statement to be annexed.

3. If the Court or judge applied to shall find sufficient ground for issuing a writ of summons in the nature of a *quo warranto* then upon such recognizance being entered into as the Act directs, and a proper affidavit of justification made, and the sufficiency of the sureties allowed by such Court or Judge, a writ shall issue, sealed and tested as other writs of summons in cases between party and party, and attached thereto shall be a copy of the relator's statement of objections and grounds, and of the names and additions of the person who shall have made the affidavits upon which the writ was moved.

The recognizance and fiat for summons, and the writ of summons in these Rules mentioned, may be in the following forms:

#### FORM OF RECOGNIZANCE. (a)

IN THE QUEEN'S BENCH (or COMMON PLEAS).

Form of recognizance.

UPPER CANADA, County (or United Counties) of —. Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and —, before me, —, of —, Chief Justice (or a Justice, or a Commissioner for taking bail) in Her Majesty's Court of Queen's Bench (or Common Pleas) for Upper

(a) See form No. 3, *post* p. 649.

Canada, cometh —, of —, and —, of —, and acknowledge themselves severally and respectively to owe to —, of — (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said —, the sum of fifty pounds, and the said — and — the sum of twenty-five pounds each, upon condition that if the said — do prosecute with effect, the writ of summons in the nature of a *quo warranto* to be issued on an order or fiat to be made at the instance and upon the relation of the said —, against the said —, to show by what authority he (*or they*) the said — claims (*or claim*) to be (*here state the office so claimed*) and why he (*or they*) the said — should not be removed therefrom [*and (where so claimed by the relator) why he the said relator (or the party or parties entitled) should not be declared duly elected, and be admitted to the said office*]; and if the said —, do pay to the said — all such costs as the said Court of — (*or the Judge presiding in Chambers, at the City of Toronto, in the County of York*) shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and }  
year first above mentioned.  
Before me, —. }

#### FORM OF A JUDGE'S FIAT ORDERING A WRIT TO ISSUE IN VACATION. (a)

IN THE QUEEN'S BENCH (*OR* COMMON PLEAS).

Upon reading the statement of —, of —, in the County of —, complaining of the undue election and usurpation of the office of —, by — [*and (if so stating) that the said — (relator or other person named) was (or were) duly elected, and ought to have been returned to the said office*], and upon reading the affidavits filed in support of the said statement, and also upon reading the recognizance of the said —, and sureties therein named, and the same being allowed as sufficient; I do order that a writ of summons do issue, calling upon the said — (*the party whose election is complained of*) to show by what authority he (*or they*) the said — (*the party whose election is complained of*) now exercises or enjoys (*or exercise and enjoy*) the said office [*and why (if so claimed) he or they*] the said — should not be removed therefrom, and the said — (*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto.]

Dated this — day of —, 18—.

NOTE—If by rule of Court, the above form should be modified accordingly,

(a) See form No. 6, *post* p. 651.

MAY 10 1891  
U.W.O. LAW

## FORM OF WRIT OF SUMMONS. (a)

## UPPER CANADA.

Form of writ of summons.

VICTORIA, by the Grace of God, &amp;c.

To —, of —, &amp;c., in the County (or United Counties) of —.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (or Common Pleas) for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise, or enjoy the office of —, which office, upon the relation of —, having, as he says, an interest in the election to the said office as a —, we are informed that you have usurped and do still usurp [*and that (if so claimed) the said — (relator or party or parties mentioned) was (or were) and should have been declared duly elected and admitted thereto*], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness the Honourable —, Chief Justice of our said Court of — (*or other Justice in whose name the writ is tested*), at Toronto, this — day of —, 18—, and in the — year of our reign.

## FORM OF NOTICE TO BE INDORSED ON, OR ANNEXED TO, THE WRIT OF SUMMONS. (b)

## IN THE QUEEN'S BENCH (or COMMON PLEAS).

Form of notice to be indorsed on, or annexed to writ.

The Queen upon the relation of —, against —.

To — and —, named in the within (*or annexed*) writ of summons.

The within (*or annexed*) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, if filed in the office of the Clerk of the Crown in this Court (*or with the Clerk in Chambers at the City of Toronto*), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [*and the*

(a) See form No. 7, *post* p. 651. (b) See form No. 8, *post* p. 652.aid -  
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# MUNICIPAL ELECTION RULES—3.

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aid — (the relator, or —, the party or parties, if any, alleged to be entitled) therein named, be declared duly elected, and will be admitted thereto in your place.]

A. B. in person,  
or by  
C. D., his Attorney.

The above mentioned deponents are :

—, of —.  
—, of —.

## MINUTE OF THE DAY OF SERVICE TO BE WRITTEN ON THE SUMMONS.

Form of minute of day of service

Served this — day of —, 18—.

In case the relator alleges that he himself, or some other person has been duly elected, the writ shall be to try the validity, both of the election complained of, and the alleged election of the relator, or person; 46 Vict. c. 18, s. 188, and in case the grounds of objection apply equally to two or more persons elected, the relator may proceed by one writ against such persons: *Ib.* s. 189.

Form of writ where seat is claimed.

The writ should be tested the day of its issue, but irregularity in this respect will be waived by the defendant by entering an appearance: *Regina ex rel. Linton v. Jackson*, 2 C. L. Ch. R. 18.

Teste of writ.

When more writs than one are brought to try the validity of an election, or the right to a Reeve, or Deputy Reeve, or Reeves, all such writs are to be made returnable before the Judge who is to try the first, and such Judge may give one judgment upon all, or a separate judgment upon each one or more of them as he may think fit: 46 Vict. c. 18, s. 190; *Regina ex rel. Forward v. Dettlor*, 4 P. R. 198. Where the first relation is collusive and intended to protect the defendant in the enjoyment of the office, it may be disregarded: *Regina ex rel. McLean v. Watson*, 1 C. L. J., N. S. 71.

If two or more writs issued, all to be returnable before the Judge who is to try the first.

In Toronto the writ is to be issued by the Clerk of the Process, and in the country by the Local Registrar, or Deputy Registrar, or Deputy Clerk of the Crown, of the County in which the election took place, and is to be returnable before a Judge: 46 Vict. c. 18, s. 191. A Judge of a County Court may make the writ returnable before a Judge of the High Court: *Regina ex rel. Lutz v. Williamson*, 1 P. R. 94.

Officers by whom writ to be issued.

Where the writ was signed and sealed by the Clerk of the Process, but actually issued by the Clerk of the Crown of the Q. B., it was held sufficiently issued by the Clerk of the Process: *Regina ex rel. Blasdell v. Rochester*, 7 C. L. J. 101.

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## Return of writ.

The writ may be made returnable the eighth day after service computed exclusively of the day of service, or upon any later day named in the writ: 46 Vict. c. 18, s. 191.

## Discretion of Judge as to granting writ.

The issuing of the summons is in the discretion of the Judge, and if in his opinion the objection relied on has not contributed to an improper result he may properly refuse to grant the summons: see *Rule 2, supra* note.

## Recognizance, amount of, allowance of.

The amount of the relator's recognizance now required, is the sum of \$200, and two sureties for \$100 each: 46 Vict. c. 18, s. 186.

A distinct order for the allowance of the recognizance is not necessary: *Regina ex rel. Linton v. Jackson*, 2 C. L. Ch. R. 18.

## Entitling.

As to entitling the recognizance: see *Regina ex rel. Bland v. Figg*, 6 C. L. J. 44.

The relator's solicitor should not act as commissioner to take the recognizance: see *C. L. Rule 78, ante* p. 513; but see *Regina ex rel. Blaisdell v. Rochester*, 12 U. C. Q. B. 630.

## Abandonment of proceedings.

Where after a summons had been obtained the relator finding his proceedings irregular notified defendant not to appear and that it was his intention to proceed *de novo*, it was held that the first proceeding was no bar to his making a second application: *Regina ex rel. Metcalfe v. Smart*, 10 U. C. Q. B. 89; 2 C. L. Ch. R. 114.

## Filing papers.

When the papers on which a summons was obtained were left with the County Court Judge, but were handed by him to the defendant's solicitor before the return day, for perusal; it was held sufficient, and that it was not essential that they should have been filed with the Deputy Clerk of the Crown before the summons issued: *Regina ex rel. Baisdell v. Rochester*, 12 U. C. Q. B. 630.

## Service of writ how to be effected

**4** A copy of such summons, and of the paper attached thereto, with a notice on the back of the copy of summons, according to the foregoing form, may be served by any literate person, who shall, within twenty-four hours after such service, make a minute on the writ of the time of serving the same; and upon the return of the writ, the party or parties summoned may appear either in person or by attorney; and the manner of appearance shall be by indorsing on the back of the relator's statement attached to the motion paper: "The within named C. D., &c., appears in person (or by attorney, as the case may be) to answer the grounds of objection to his election, which are stated within."

## Minute of service to be indorsed.

## Appearance how entered.

## Form of appearance.

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The writ is to be served personally, but if the defendant evade service an order for substitutional service may be made : 46 Vict. c. 18, s. 192 ; but personal service will not be dispensed with except for this cause : *Regina ex rel. Arnott v. Marchant*, 2 C. L. Ch. R. 167. Irregularities in the writ may be waived by appearance : *Regina ex rel. Linton v. Jackson*, 2 C. L. Ch. R. 18.

Service of writ,  
how to be made

In general a copy of the writ should be left with the defendant and the original shown to him if he desire to see it : *Goggs v. Huntingtower*, 1 D. & L. 599, per Alderson, B. Service upon a wife, agent, or servant is not personal service : *Frith v. Donegal*, 2 Dowl. 527 ; *Davies v. Morgan*, 2 C. & J. 237 ; *Goggs v. Huntingtower*, *supra* ; *Christmas v. Eicke*, 6 D. & L. 156 ; *Harrison's Munl. Mand.* (4th ed.) 139.

An irregularity in the teste of the writ is waived by entering an appearance : *Regina ex rel. Linton v. Jackson*, 2 C. L. Ch. R. 18.

Irregularity in  
writ waived.

It would seem that the writ should now be tested in the name of the President of the High Court of Justice : see *Rule S. C. 9*.

**5.** If upon the return day of the summons the party or parties, having been duly served, shall not appear, then, on proof of such service by affidavit, according to the form subjoined, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made as to such party or parties as make default, on the back of the relator's statement, thus : " The within named C. D. (and E. F.), being duly summoned, hath (or have) not appeared to answer to the matters within objected." Which entry shall be dated on the day of the return, and may be made on any subsequent day, if omitted to be made on that day.

Proceedings in  
case of non-ap-  
pearance.

#### FORM OF AFFIDAVIT OF SERVICE. (a)

When made personally, if service special under the 148th clause of the Statute 12 Vict. cap. 81, the affidavit to be modified accordingly.

##### IN THE QUEEN'S BENCH (OR COMMON PLEAS).

The Queen on the relation of —, against —.

—, of —, in the —, maketh oath and saith, that he did, on the — day of —, personally serve the above named defendant (or defendants) with the annexed writ of summons, by delivering to him (or each of them) a true copy thereof, on which said copy was indorsed a written notice, a copy whereof is hereto annexed, and to

Form of affidavit  
of service of writ,  
and statement.

(a) See form No. 11, *post* p. 653.

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which said copy (or copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and the deponent further saith, that the minute (or minutes) of the said service, written on the said writ of summons, was (or were) so written by this deponent within twenty-four hours after such service.

Sworn at —, in the County of —, this — day of —, 18—.

Before me, —.

See 46 Vict. c. 18, s. 192.

Returning Officer may be added as a party.

Summons to be issued.

Appearance and subsequent proceedings thereon.

**6.** When it shall appear to the Court or Judge that the Returning Officer should be made a party, a writ of summons shall issue to him, in the following form, upon a rule of Court to issue for that purpose, or upon the fiat of the Judge, which summons shall be served with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons, as aforesaid; and the party served shall appear and enter his appearance within the same time after service, and in the same manner; and in default thereof, he shall be liable to have judgment passed against him in his absence, as in the case of any other defendant making a like default and be dealt with by attachment, execution or otherwise, as the circumstances of the case may require.

#### FORM OF WRIT OF SUMMONS TO A RETURNING OFFICER. (a)

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

Form of writ of summons against a Returning Officer.

Whereas, upon the relation of —, in our Court of Queen's Bench (or Common Pleas), —, it hath been ordered that a writ of summons should issue to —, to show by what authority he (or they) claims or exercises (or claim or exercise) the office of —. And whereas it appears to our Justices of our Court of Queen's Bench (or Common Pleas), before whom the said writ hath been made returnable (or as the case may be), that you were the Returning Officer by whom the said — hath (or have) been returned as duly

(a) See form No. 9, post p. 652.

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electd to the said office, and that it is proper you should be made a party to the proceeding aforesaid : These are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (or Common Pleas) for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on —, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

The Judge before whom the writ is made returnable, or is returned, may, if he thinks proper, order the issue of a writ of summons at any stage of the proceedings to make the Returning Officer, or any Deputy Returning Officer a party thereto, 46 Vict. c. 18, s. 193. Where any charge is made against a Returning Officer it should be clearly made out, as in the absence of evidence to the contrary the Court will presume he has acted properly : *Regina ex rel. Walker v. Hall*, 6 U. C. L. J. 138. When he acts in good faith, though illegally, it is not usual to order him to pay costs : *Regina ex rel. Coupland v. Webster*, 6 U. C. L. J. 89. Where after the close of the election the Returning Officer received an affidavit from a voter that his vote had been entered by mistake for relator, on which he altered his vote in the poll book, and the votes then being equal, he gave his casting vote, the election was set aside : *Regina ex rel. Acheson v. Donoghue*, 15 U. C. Q. B. 454 ; and in a similar case the Returning Officer was ordered to pay the relator's costs : *Regina ex rel. Mitchell v. Rankin*, 2 C. L. Ch. R. 161. After the close of the poll the Returning Officer could not formerly vote, although he then for the first time discovered the votes were equal : *Regina ex rel. Bulger v. Smith*, 4 U. C. L. J. 18 ; but see now 46 Vict. c. 18, s. 156.

Returning officer may be made a party.

Charge against Returning Officer to be clearly made out.

Liability of Returning Officer for costs.

7. In case of default of appearance by any party summoned as aforesaid, the Judge recording the same may, as to such as make default, proceed *ex parte* ; and as to such as shall have appeared, as is herein provided, proceed to determine the validity of the election or elections complained of, and also (if so claimed) of the election of the person or persons alleged to have been duly elected, and give judgment thereon ; or he may, in his discretion, with or without any application for that purpose, and having regard to the distance of the place where the party was served, or other circumstances,

Proceedings in default of appearance may be taken *ex parte*.

Time for appearance may be enlarged.

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appoint a further day for the appearance of the party or parties summoned, of which an entry shall be made and signed by the Judge to the following effect, at the foot of the entry of non-appearance on the back of the relator's statement: "Whereupon a further day is given to the said — (or the said — and —) to appear on," &c.

On which day, or as soon after as may be convenient, if no further postponement shall be in like manner granted, the case may be heard and disposed of in like manner as if the same had been determined and judgment given thereon, without granting a further day for appearance.

46 Vict. c. 18, s. 195, provision of, as to trial.

"The Judge shall in a summary manner, upon statement and answer, without formal pleadings hear and determine the validity of the election, or the right to a Reeve or Deputy Reeve, or Reeves, and may by order cause the assessment rolls, collector's rolls, list of electors, and any other records of the election to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him, and sent to be tried by jury by writ of trial directed to any Court named by the Judge, or by one or more of these means, as he deems expedient, subject however to the provisions of section 210:" 46 Vict. c. 18, s. 195.

*Ib.* s. 210.

Section 210 provides that when in an application in the nature of a *quo warranto*, any question is raised as to whether the candidate or any voter has been guilty of any bribery, corruption, or using violence, or intimidation, within sections 207, or 208 of the Act, the evidence to prove the offence must be given *videlicet* before a Judge of any County Court, upon a reference to him by the Judge of the High Court for that purpose, or upon an appointment granted by him in cases pending in such County Court.

In other cases the right to adduce oral evidence is in the discretion of the Judge, and an oral examination of the parties or witnesses may be refused: *Regina ex rel. Piddington v. Riddell*, 4 P. R. 80.

Where an issue is directed to be tried by a jury, see *post* Rule 12.

As to the answer required see Rule 10 *post*.

Parties entitled to copies of affidavits on payment for same.

**8.** At any time before the hearing, any party may have copies of the affidavits filed, on paying for the same.

**9.** object against person any summons discre upon of objection in the

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**10.** appeal or then answer pending any party such ev

46 Vict. ment and this Rule need be force. M by the A admitted Ch. R. 88

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9. At the hearing the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected, on any ground not specified in the statement on which the summons was moved; but it shall nevertheless be in the discretion of the Judge, if he shall think fit, to entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him.

Relator not to be allowed to rely on grounds or objections at the hearing, which are not mentioned in his statement.

But Judge has discretion to entertain same.

When the interest of the relator appeared by the affidavits, but was omitted from the statement, the latter was allowed to be amended: *Regina ex rel. O'Reilly v. Charlton*, 6 P. R. 254.

Amendment of relator's statement allowed.

10. When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case, than by affidavits filed in answer; but the Judge before whom the case shall be pending may, in his discretion, require from either or any party further affidavits, or the production of any such evidence as the law allows.

Where party appears, no formal answer need be filed in addition to affidavit.

Judge may call for further evidence.

46 Vict. c. 18, s. 195, provides that the Judge shall upon "statement and answer," hear and determine the question raised. From this *Rule* it would appear that no answer separate from the affidavits need be filed: see s. 206, which expressly continues these *Rules* in force. Material facts alleged in the relator's statement and supported by the affidavit should be answered, or they may be taken to be admitted by the defendant: *Regina ex rel. Hervey v. Scott*, 2 C. L. Ch. R. 88.

Facts alleged by relator not answered, will be taken to be admitted.

And the interest of the relator, if intended to be contested must be distinctly denied, even in a case where though it is stated in the statement, it is not verified by the relator's affidavit: see *ante* note to *Rule 2*.

11. In case of disclaimer under the statute 13 & 14 Vict. cap. 64, Schedule A. No. 23, the provisions therein contained, and in sub-proviso No. 6, are to be observed.

Provisions of statute as to disclaimers to be observed.

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Disclaimer,  
where to be filed.

By 46 Vict. c. 18, s. 198, "Any person whose election is complained of may, unless such election is complained of on the ground of corrupt practices on the part of such person, within one week after service on him of the writ, transmit post paid, through the post office directed to "The Clerk of the Judge's Chambers, at Osgoode Hall-Toronto," or to "The Judge of the County Court of the County of \_\_\_\_\_" (as the case may be) or may cause to be delivered to such Clerk or Judge a disclaimer signed by him to the effect following :

Form of disclaimer, after proceedings.

I, A. B., upon whom a writ of summons, in the nature of a *quo warranto*, has been served for the purpose of contesting my right to the office of Township Councillor (or as the case may be) for the Township of \_\_\_\_\_, in the County of \_\_\_\_\_, (or as the case may be), do hereby disclaim the said office, and all defence I may have of any right to the same.

Dated \_\_\_\_\_ day of \_\_\_\_\_ (Signed.) A. B."

Transmission of.

Such disclaimer, or the envelope containing the same, is to be indorsed on the outside thereof with the word "Disclaimer," and to be registered at the Post Office where mailed. *Ib.* s. 199.

A duplicate should also be delivered to the Clerk of the Council: see s. 202, *infra*.

Where there has been a contested election, the person elected may at any time after the election, and before his election is complained of, deliver to the Clerk of the Municipality a disclaimer signed by him as follows :—

Form of disclaimer before proceedings.

"I, A. B., do hereby disclaim all right to the office of Township Councillor (or as the case may be) for the Township of \_\_\_\_\_ (or as the case may be), and all defence of any right I may have to the same." *Ib.* s. 200.

Party disclaiming not liable for costs.

"Such disclaimer shall relieve the party making it from all liability to costs, and when a disclaimer has been made in accordance with the preceding sections, it shall operate as a resignation, and the candidate having the highest number of votes shall then become the Councillor, or other officer as the case may be." *Ib.* s. 201.

Duplicate of disclaimer to be delivered to clerk of council.

A duplicate of every disclaimer is to be delivered by the party disclaiming to the Clerk of the Council who is forthwith to communicate it to the Council: see *Ib.* s. 202.

Costs when disclaimer filed.

Where a disclaimer is filed, no costs are to be awarded against any person duly disclaiming, unless the Judge is satisfied that such party consented to his nomination as a candidate, or accepted the office, in which case the costs are in the discretion of the Judge: *Ib.*, s. 203; *Regina ex rel. Coupland v. Webster*, 6 U. C. L. J. 89.

The procedure laid down in the Statute should be strictly followed, otherwise the disclaimer would be insufficient to relieve the party disclaiming from costs.

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Where the disclaimer was filed a day too late the defendant was ordered to pay the relator's costs : *Regina ex rel. Hawke v. Hall*, 2 C. L. Ch. R. 182 ; and where a defendant, after he had accepted office but before he knew of the issue of the writ, but knowing that his election was to be contested, sent an instrument to the council in the following form :—"Palmerston, February 7th, 1881, To the Mayor and Council of the Town of Pamerston : Gentlemen. I beg to disclaim my seat at the Council Board. (Signed). G. S. Davidson," it was held that the disclaimer, not being in the form prescribed by the Statute, was not sufficient to relieve the defendant from costs : *Regina ex rel. Mitchell v. Davidson*, 8 P. R. 434.

The effect of a disclaimer after the issue of a writ is to put an end to the suit : *Regina ex rel. Hannah v. Paul*, 9 C. L. J. N. S. 238 ; but where the object of the proceedings is not only to cause the defendant to vacate the office, but to substitute another candidate in the office, the disclaimer cannot prevent the substitution : see *Regina v. Blizzard*, 2 L. R. Q. B. 55.

Effect of disclaimer after writ issued.

**12.** In case a necessity shall appear for sending an issue to be tried by a jury, the writ for that purpose may be in the following form, and shall issue on the fiat of the Judge directing the same, and bear date on the day of its issuing :

When issue to be tried by jury, writ of trial to issue.

#### WRIT OF TRIAL. (a)

[L. S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith.

Form of writ of trial.

To the Judge of the County Court of the County of —,

#### GREETING :

Whereas, upon the trial of the validity of an election of —, chosen upon the — day of —, to be — for the Township of — (or as the case may be), in the County of —, and which election hath been complained of by E. F., as the relator, alleging (as the case may be), that he himself, or that he and C. D., &c., or that C. D., &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (here state concisely the issues to be tried) ; and whereas it is desired by —, our Chief Justice (or Justice) of our Court of Queen's Bench (or Common Pleas), before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury : We do, therefore, pursuant to the statute in such case made and provided, command you, that by twelve good and lawful men of the County of —, who are in no wise akin to the said E. F., the relator in the said case, or to the

(a) See form No. 16, post p. 655.

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said (*the other party or parties, naming him or them*), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or Justice*) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

Witness the Honourable —, Chief Justice (*or Justice*) of our said Court, at Toronto, this — day of —, in the — year of our reign.

#### FORM OF INDORSEMENT OF VERDICT THEREON. (a)

Form of indorsement of verdict.

I hereby certify that on the — day of —, before me, L. M., Judge of the County Court of the County (*or United Counties*) of —, came as well the within named relator as the within named — (*the other party or parties*) by their attorneys (*or as the case may be*), and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

Writ, how tested.

See *ante* Rule 7 and 46 Vict. c. 18 s. 195.

It would seem that the writ should now be tested in the name of the President of the High Court of Justice: see *Rule S. C. 9*.

Judgment on application how to be formulated.

**13.** When the Judge before whom any such case shall be pending shall have determined the same, either *ex parte* in case of default, or on hearing the parties, or partly *ex parte* and partly on hearing the parties, he shall make up and annex to the statement of the relator, and to the affidavits and other papers filed in the case, a written judgment, attested by his signature, and dated on the day of the same being signed, in which it shall be sufficient to state concisely the ground and effect of the judgment, which judgment may be at any time amended by the same Judge, in regard to any matter of form. And the following may be the form of judgment when in favour of the relator:

#### IN THE QUEEN'S BENCH (*or COMMON PLEAS*). (b)

The Queen on the relation of —, against —.

Be it remembered, that on the — day of —, in the year of

Form of a judgment for a relator.

(a) See form No. 17, *post* p. 656. (b) See form No. 18, *post* p. 656.

our Lord one thousand eight hundred and —, at the Judge's Chambers in the City of Toronto, before me, —, Chief Justice (or Justice) of Her Majesty's Court of Queen's Bench (or Common Pleas), came as well the above named relator by —, his attorney, as the above named — by his (or their) attorney, and service of the writ of summons hereunto annexed having been duly proved upon affidavit, and upon the said day and upon other days thereafter, at his Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said — of the office of —, in the said writ of summons mentioned [and (if so) the election of (the party or parties named) thereto], and the answers and proofs of the said —; and having heard the said parties by their counsel (or as the case may be), and upon due consideration of all and singular the premises, now, that is to say, this — day of —, in the year aforesaid, I do adjudge and determine:

*First*—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of — as a —.

*Second*—That, &c.

*Third*—That, &c.

*Fourth*—That the said — hath (or have) usurped, and doth (or do) still usurp the said office, and that he (or they) be removed therefrom [or that the election of — to the said office was void, and that he (or they) be removed therefrom (as the judgment may be)]: And that the said relator (or the said [naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office] was (or were) duly elected thereto, and ought to have been returned, and is (or are) entitled in law to be received into, and to use, exercise and enjoy the said office: And I do adjudge and determine that the said — do not in any manner concern himself (or themselves) in or about the said office, but that he (or they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (naming the relator or parties whose election is affirmed) be (or be respectively) admitted to the said office in his (or their) place or places: [And I do further order, adjudge, and determine, that the said relator do recover against the said — his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said —, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

E. F., J.

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And the following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form :

Form a Judgment for defendant.

Thereupon now at this day, that is to say, on the — day of — aforesaid, at the Judges' Chambers at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said — being seen and fully understood, I do consider and adjudge that the said office of — so claimed by him (or them) the said — be allowed and adjudged to him (or them) ; that the said — be dismissed and discharged of and from the premises above charged upon him (or them) ; and also that he (or they) the said — do recover against the said relator his (or their) costs by him (or them respectively) laid out and expended in defending himself (or themselves) in this behalf. All which, &c., (*as in the judgment for the relator*). (a)

When the Returning Officer is made a party, the judgment to be modified accordingly.

Four days after return of judgment into Court, if not moved against, costs may be taxed.

**14.** When the judgment of the Judge in Chambers shall have been returned into Court according to the statutes, and after the end of four days after such return, and if no rule shall have been granted to set aside or amend the judgment, the relator, or person (or persons) in whose favour the judgment shall have been given, shall be at liberty to tax his or their costs, and the following entry shall be made under or upon the record of the judgment, after which execution may issue :

Form of a judgment for costs.

Afterwards, that is to say, on the — day of —, in the — year of the reign of our Lady the Queen, cometh the said —, and prayeth that his (or their) said costs, so as aforesaid adjudged to him (or them), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said —, in and about his (or their) prosecution (or defence) aforesaid, [and (*when the Returning Officer is a party*) of the said —, in and about his defence aforesaid], so as aforesaid adjudged to him (or them), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said — at the sum of — [and the costs of the said — (*when Returning Officer entitled thereto*), at the sum of —], and the said — in mercy, &c. (b)

(a) See form No. 19, *post* p. 657. (b) See form No. 20, *post* p. 658

The return of the proceedings into Court referred to in this *Rule*, is provided for by 46 Vict. c. 18, s. 205.

According to that section the decision of the Judge is to be final. Judgment, how far final.  
The question whether an appeal will lie from the decision of the Master in Chambers, to a Judge, was raised in *Regina ex rel. Hamilton v. Piper*, 8 P.R. 225, but not decided. See Harr. Mun. Manl. 4th ed.) 151, note c. From *Regina ex rel. Grant v. Coleman*, 7 App. R. 619, it would appear that there is no power to review the decision of a Judge, or the Master in Chambers, either as regards the final judgment, or even as to interlocutory matters.

15. The writs of *certiorari* and *mandamus*, which it Writs of certiorari and mandamus, how to be framed may become necessary to issue in any such case, will be in the common form of such writs, the command therein contained being suited to the circumstances of each case, and, when applicable, the following form may be used :

#### FORM OF A WRIT OF MANDAMUS. (a)

*To remove the person (or persons, being less than the whole number of members of any Municipal Corporation) whose election is adjudged invalid, and to admit the person or persons adjudged lawfully elected.*

VICTORIA, &c.

To the Municipal Corporation of (the Town, Township, or City) of —.

Whereas on the — day of —, in the year of our Lord one thousand eight hundred and —, at the Judges' Chambers in the City of Toronto, before —, Chief Justice (or one of the Justices) of our Court of Queen's Bench (or Common Pleas) for Upper Canada, it was by the said Chief Justice (or Justice) adjudged and determined that —, of —, had usurped, and did then usurp, the office of — [and that — was (or were) duly elected thereto, and ought to have been returned, and was (or were) entitled in law to be received into, and to use, exercise and enjoy the said office], all which has by the said Chief Justice (or Justice) been duly certified into our Court of Queen's Bench (or Common Pleas), pursuant to the statute in that behalf. Now, we, being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (the person or persons, naming him or them, whose election has been declared invalid) do not in any manner concern himself (or themselves) in or about the said office, but that he (or they) be absolutely forejudged,

(a) See form No. 21, post p. 658.

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removed and excluded from further using or exercising the same, under pretence of his (or their) election thereto.\* [And we do further command that the said (the person or persons, naming him or them, who has or have been adjudged lawfully elected) be forthwith admitted, received, and sworn into the said office, to use, exercise, and enjoy the same.] And we do hereby command you, and every of you, to obey, observe, and do all and every act, matter, and thing that may be necessary on the part of you or any of you in the premises, according to the purport, true intent, and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (or Common Pleas) at Toronto, on the——day of——, how this writ shall have been executed.

Witness, &c.

#### FORM OF A WRIT OF MANDAMUS. (a)

*When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has (or have) been returned, nor the person or persons claimed to be returned is (or are) held valid, and for a new election.*

VICTORIA, &c.

Form of a writ  
of mandamus to  
corporation to  
hold new election.

To the Municipal Corporation of——, and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held.

Whereas (as in the last precedent to the asterisk, omitting the part between brackets and then proceed as follows :) And we do further command that you the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (or persons) in the place or stead of the said——, who has (or have) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (or persons) who shall be so elected the oath (or oaths), if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (or persons) so elected into the said office, and that you, the said Municipal Corporation, do shew how this writ shall have been executed to our Court of Queen's Bench (or Common Pleas) at Toronto, on the——day of——.

Witness, &c.

(a) See form No. 22, *post* p. 659.

## FORM OF A WRIT OF MANDAMUS. (a)

*Directed to the Sheriff, where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.*

VICTORIA, &c.

To the Sheriff of the County (or United Counties) of —,

GREETING :

Whereas (the same as in the first precedent of a mandamus to the end of the words "adjudged and determined," then say :) that the election (or elections) of all the members of the Municipal Corporation of —, returned as elected at the election (or elections) of members of the said Corporation held (describing the time or times and place or places of such election or elections) was (or were) invalid or void in law, and that (naming them all) had usurped (proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows :) And we do hereby further command you the said Sheriff, that you do, pursuant to the statute in that behalf, admit or return and swear into, or cause the said — (naming the person adjudged to have been duly elected) to be forthwith admitted or returned, and sworn into the said office, to use, exercise and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the Premises. And we hereby command and strictly enjoin all and every person and persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent, and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench (or Common Pleas) at Toronto, on the — day of — next, and have then there this writ.

Witness, &c.

## FORM OF A MANDAMUS. (b)

*To the Sheriff, when the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.*

VICTORIA, &c.

To the Sheriff, &c., (as in the last (c) precedent to the asterisk,\* omitting the part between the brackets, and adopting the plural form, then concluding as follows :) And that you do every act necessary to be done by you in order to the due election and admission of members of the said Corporation, in the place and stead of the persons whose elec-

Form of mandamus to Sheriff when all the members of a corporation are ousted, to admit those lawfully elected.

Form of mandamus to Sheriff for new election

(a) See form No. 23, post p. 660. (b) See form No. 24, post p. 660.

(c) The word 'first' is probably intended here, instead of 'last.'

tions have been so declared invalid; and we hereby command and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end*).

Witness, &c.

The Form of writs of execution for costs in any such case may be as follows:

FI. FA. AGAINST DEFENDANT FOR RELATOR'S COSTS. (a)

UPPER CANADA.

Form of *fi. fa.*  
for costs against  
defendant.

VICTORIA, &c.

To the Sheriff of the County of —;

GREETING:

We command you, that you levy, or cause to be levied, of the goods and chattels of C. D., late of — [add the description of the Returning Officer, where the execution is against him], the sum of —, which hath been lately adjudged to A. B., of —, in our Court of Queen's Bench (or Common Pleas) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against —, at the relation of the said A. B., for usurping the office of —, in our — of —, in your County [add, when the Returning Officer is a party, to which proceeding the said — was made a party], and whereof the said C. D. [&c.] is (or are) convicted, as in our said Court appears of record, and that you have that money before our Court of Queen's Bench (or Common Pleas) at Toronto, on the — day of — Term, to satisfy the said A. B. for his costs aforesaid, and have you then there this writ.

Witness, &c.

FI. FA. AGAINST THE RELATOR FOR THE DEFENDANT'S COSTS. (b)

UPPER CANADA.

Form of *fi. fa.*  
for costs against  
relator.

VICTORIA, &c.

To the Sheriff of the County (or United Counties) of —.

GREETING:

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of —, the sum of —, which hath lately been adjudged to C. D., of —, in our Court of Queen's Bench (or Common Pleas) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid

(a) See form No. 25, post p. 661. (b) See form No. 26, post p. 661.

out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of — in our — of —, in your County (or Counties); [if the Returning Officer has been made a party, add here, to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office, was made a party], whereof the said A. B. is convicted, as in our Court appears of record; and that you have that money before our said Court at Toronto, on the — day of — Term, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ. Witness, &c.

*N.B.*—When the Returning Officer has been made a party, and is entitled to costs, the *fiery facias* must be framed accordingly.

Execution for costs can only be issued upon a final judgment in the matter. There appears to be no power to award execution to recover costs under any interlocutory order: see per Patterson, J.A. *Regina ex rel. Grant v. Coleman*, 7 App. R. at p. 626.

**16.** Contempts in disobeying writs of summons, *certiorari*, *mandamus*, or other process, rule, or order of either Court, or of any Judge thereof, acting in the execution of the powers conferred by the statutes 12 Vict. cap. 81, and 13 and 14 Vict. cap. 64, are to be certified into the Court from which the writ of summons issued, to be dealt with like other contempts of such Court in other cases.

Contempts to be certified to Court.

**17.** If any of the forms given in the foregoing rules shall not be found adapted to a case which may arise in reference to proceedings connected with, or resulting from, the trial of the validity of Municipal elections, changes are to be made therein when necessary, at the discretion of the Judge who shall try and determine the case, to adapt the same to such particular case.

Forms to be adapted to meet the circumstances of any case.

**18.** None of the proceedings which shall be had in any case for trying the validity of any election, or which shall follow the determination thereof, shall be set aside, or held void, on account of any irregularity or defect which shall not, in the opinion of the Court or Judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits.

Proceedings not to fail for mere irregularities not affecting the merits.

Proceedings are not to be held irregular and void which do not interfere with the just trial of the matter on the merits : *Regina ex rel. McManus v. Ferguson*, 2 C. L. J. N. S. 19.

Writ cannot be set aside for a more irregularity

Where a County Court Judge had set aside a writ which had been granted by himself, on exceptions taken thereto for irregularity ; it was held that he had power to take that course, and that a Superior Court had no power to interfere with his decision : *Regina ex rel. Grant v. Coleman*, 8 P. R. 497 ; 46 U. C. Q. B. 175 ; and see *Regina ex rel. O'Dwyer v. Lewis*, 32 C. P. 104. But the Court of Appeal, although affirming the decision on the ground that the matter was not appealable, nevertheless held that, after a *quo warranto* summons has been issued, and served, it cannot properly be set aside for irregularity, but must be disposed of on the merits : *Regina ex rel. Grant v. Coleman*, 7 App. R. 626.

Costs—Tariff of prescribed.

**19. Costs.**—The same table as authorized by the fifteenth rule of Hilary Term last, and any disbursements necessarily made, and not allowed for in the said table, may be taxed according to the table of fees generally established in the Court in which the proceedings shall be conducted.

The tariff of fees prescribed by this *Rule* was subsequently superseded by *Rule* of Michaelmas term 1871, 35 Vict., which established a new tariff. See *post* p. 646.

Costs, discretion of Judge as to.

No costs are to be awarded against a person duly disclaiming, unless the Judge is satisfied that such party consented to his nomination, or accepted the office, in which case costs shall be in the discretion of the Judge. In all cases not otherwise provided for, costs are in the discretion of the Judge : 46 Vict. c. 18, ss. 203, 204.

There appears to be no means of enforcing payment of interlocutory costs, unless they be ordered to be paid by the final judgment in the matter : see per PATTERSON, J.A., *Regina ex rel. Grant v. Coleman*, 7 App. R. at p. 626.

Where a new election is ordered, the relator is *prima facie* entitled to costs against the defendant : *Regina ex rel. Ross v. Rastal*, 2 C.L.J. N. S. 160 ; *Regina ex rel. Kirk v. Asselstine*, 1 U. C. L. J. 49. So also when the relator is declared entitled to the seat in consequence of defendant's disqualification : *Regina ex rel. Richmond v. Tegart*, 7 U. C. L. J. 128.

But the Judge may refuse to order a party to pay costs, when it is not shown that he participated in the improper conduct for which an election is set aside : *Regina ex rel. Davis v. Wilson*, 3 U. C. L. J. 165 ; and see *Regina ex rel. Swan v. Rowat*, 13 U. C. Q. B. 340 ; *Regina ex rel. Gordanier Perry*, 3 U. C. L. J. 90.

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When the relator was an officer of the Corporation, though successful, costs were refused: *Regina ex rel. McMullen v. DeLisle*, 8 U. C. L. J. 291; *Regina ex rel. Brine v. Booth*, 9 P. R. 452.

Costs—when relator, an officer of the corporation

A defendant who had acted in good faith, but was held to be disqualified, was ordered to pay costs: *Regina ex rel. Rollo v. Beard*, 3 P. R. 357; *In re Charles v. Lewis*, 2 C. L. Ch. R. 171, 177.

Decisions as to costs.

But where a defendant through the improper decision of the clerk of a Council, was declared entitled to a seat, and accepted office, and was sworn in without having interfered with the decision of the clerk, or otherwise misconducted himself, though his election was set aside, no costs were awarded against him: *Regina ex rel. McManus v. Ferguson*, 2 C. L. J. N. S. 19.

Where a returning officer was added as a party, and was acquitted and discharged, and the relator's statement not being strictly correct, the relator was ordered to pay the officer his costs: *Regina ex rel. Hawke v. Hall*, 2 C. L. Ch. R. 182.

Returning Officer, cost to, and against, when ordered.

A returning officer will not usually be ordered to pay costs, even though his conduct be in some particulars irregular, if his motives were pure, and his conduct free from corruption or partiality: *Regina ex rel. McVean v. Graham*, 7 U. C. L. J. 125; *Regina ex rel. Coupland v. Webster*, 6 U. C. L. J. 89; *Regina ex rel. Arnott v. Marchant*, 2 U. C. L. Ch. R. 189.

Where the returning officer acted *bonâ fide*, and the defendant procured a written legal opinion to be sent to him, by which means he obtained the seat, the costs of making the returning officer was ordered to be paid by the defendant: *Regina ex rel. Pomeroy v. Watson*, 1 U. C. L. J. 48.

Where the returning officer has acted improperly at the defendant's instance, both he and the defendant may be ordered to pay the relator's costs: *Regina ex rel. Acheson v. Donoghue*, 15 U. C. Q. B. 454.

But a returning officer who received illegal votes, not on the assessment rolls, was ordered to pay costs: *Regina ex rel. Johnston v. Murney*, 5 U. C. L. J. 87; and see *Regina ex rel. Mitchell v. Rankin*, 2 C. L. Ch. R. 161; *Regina ex rel. Totten v. Benn*, 4 U. C. L. J. 262; *Regina ex rel. Corbett v. Jull*, 5 P. R. 41.

Costs will not always be awarded against an unsuccessful relator: *Regina ex rel. Crozier v. Taylor*, 6 U. C. L. J. 60; *Regina ex rel. Armor v. Coste*, 8 C. L. J. 290; *Regina ex rel. Piddington v. Riddell*, 4 P. R. 80.

Unsuccessful relator not always ordered to pay costs.

A by-law passed by a township council levying money to pay the costs of a contested election is illegal, and will be quashed with costs: *In re Bell v. Manvers*, 2 C. P. 507; 3 C. P. 400.

By-law to pay costs of contested election is illegal

W. W. J. LAW

## TARIFF OF COSTS IN CONTESTED MUNICIPAL ELECTION PROCEEDINGS.

The costs taxable under Rule M. T. 1871, 35 Vict., are as follows :—(See 32 U. C. Q. B. 211.) (a)

## CLERK IN CHAMBERS.

Tariff of costs in contested municipal election cases.		\$ c.
For each fiat granted by a Judge for a writ of Quo Warranto or for a Rule of Court .....		0 50
For every summons .....		0 25
For every order .....		0 50
For filing each paper .....		0 07
Taking affidavit .....		0 20
For making up each final judgment of the Judge and returning the same into Court .....		1 00
Copies of papers, per folio of 100 words .....		0 10
Every search, if not more than two terms .....		0 10
“ “ if exceeding two terms and not more than four .....		0 20
“ “ if exceeding four terms or a general search ....		0 50

## ATTORNEY.

<i>Instructions</i> —To apply for a writ of summons or defend against .....	2 00
<i>Statement</i> —Of grounds of complaint, including fair copy ...	2 00
<i>Affidavits</i> —Whether special or common, per folio of 100 words .....	0 20
<i>Recognizance</i> —Drawing .....	1 00
<i>Attendances, Special</i> —At Chambers, for writ of summons, to serve writ, upon the argument, or to hear judgment ...	1 00
<i>Attendances, Common</i> —All other attendances, not mentioned as special, each .....	0 50
<i>Writs</i> —Preparing Writ of Summons, Writ of Certiorari, Mandamus, Trial, or Writ of Execution, each .....	1 00
Fee on each writ .....	1 00
<i>Notices</i> —Indorsement on writ of summons, every other indorsement upon writ, when required to be made, and all common notices, each .....	0 50
<i>Copies</i> —Of statement or other papers and documents, when required to be made or served, half the amount allowed for the original, and where no specific sum is allowed, then copies of papers required, or which may be directed to be made, furnished or served, to be allowed per folio of 100 words .....	0 10
<i>Issues</i> —When directed to be tried, preparing same .....	1 00

(a) This tariff is not superseded by the tariff of the Supreme Court of 10th September, 1881: *Regina ex rel. Wilnot v. Falkner: Regina ex rel. Buck v. Husband*, before Queen's Bench Divisional Court, 21st November, 1884.

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*Disbursements*—Postages actually paid; mileage when it is necessary to employ parties to serve writs, papers, &c., the actual number of miles travelled to perform the service, per mile ..... 0 10

(The affidavit must state the number of miles actually travelled, and also that the charge has been paid.)

N. B.—No instructions to be allowed nor attendances to swear affidavits.

Instructions for briefs as in ordinary cases.

Briefs, per folio of original matter, when necessary ..... 0 20

Briefs, per folio of copy, when necessary ..... 0 10

## COUNSEL.

*Fee*—For argument upon the return of the writ of summons,

If argued by counsel ..... 10 00

To be increased at the discretion of the Judge, according to

the importance of the case, to not exceeding ..... 20 00

CLERKS OF THE CROWN AND PLEAS AND  
THEIR DEPUTIES.

(As per Statute 27 & 28 Vict. c 5.)

For taking recognizance ..... 0 50

For signing and sealing each writ ..... 0 30

For each Order or Rule of Court ..... 0 50

For filing each paper ..... 0 10

Copies of papers, per folio of 100 words ..... 0 10

## COMMISSIONER.

For taking recognizance ..... 0 50

Swearing each affidavit ..... 0 20

Witnesses, Jurors, Sheriff, and other officers, the same fees and allowances as for similar services at *nisi prius*, and in the Courts of Queen's Bench, and Common Pleas.

(Signed)

WM. B. RICHARDS, C. J.

JOHN H. HAGARTY, C. J., C. P.

JOS. C. MORRISON, J.

ADAM WILSON, J.

JOHN W. GWYNNE, J.

THOMAS GALT, J.

W. B. RICHARDS, C. J.  
JOHN H. HAGARTY, C. J., C. P.  
JOS. C. MORRISON, J.  
ADAM WILSON, J.  
JOHN W. GWYNNE, J.  
THOMAS GALT, J.



## FORMS OF PROCEEDINGS

IN

## CONTESTED MUNICIPAL ELECTIONS, (a).

No. 1.—*Form of Statement of the Relator.*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

The statement and relation of —, of —, who, complaining that —, of — (*here inserting the names and additions of all, if more than one person*), hath (or have) not been duly elected, and hath (or have) unjustly usurped and still doth (or do) usurp the office of —, in the Town of — (or Township of —, *as the case may be*), in the County (or United Counties) of —, under the pretence of an election held on —, at —, in the said County (or United Counties) [and (*when it is claimed that the relator, or the relator and another, and others ought to have been returned*) that (*here name the party or parties so entitled*) was (or were) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a —, states and shews the following causes why the election of the said — to the said office should be declared invalid and void. [And (*when so claimed*) the said — (*naming the party or parties*) be duly elected thereto.]

*First*—That (*for example*) the said election was not conducted according to law, in this, that, &c.

*Second*—That the said — was not duly or legally elected or returned, in this, that, &c.

*Third*—That, &c.

*Signed by the relator in person or by C. D. his attorney.*

NOTE—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

(a) The forms given in the foregoing rules require sundry verbal alterations, in consequence of the change effected by the *Judicature Act* in the name of the Court, &c.; it has therefore been deemed advisable to reprint the forms, shewing the alterations necessary. When the proceedings are taken before the Judge of a County Court, the following forms will need corresponding alterations.

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To Wit } County of —, (addition) make oath and say:

1. I am the relator above named.
2. I believe the several grounds which are set forth in the above statement against the validity of the election therein mentioned are well founded.

### No. 3.—*Form of Recognizance.*

IN THE HIGH COURT OF JUSTICE.

~~\_\_\_\_\_~~ DIVISION.

ONTARIO, County (or United Counties) of ——. Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and —, before me, —, of —, Chief Justice of &c., (or a Justice, or a Commissioner for taking bail in Her Majesty's High Court of Justice for Ontario,) cometh —, of —, and —, of —, and acknowledge themselves severally and respectively to owe to —, of — (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said —, the sum of two-hundred dollars, and the said — and — the sum of one-hundred dollars each, upon condition that if the said — do prosecute with effect, the writ of summons in the nature of a *quo warranto* to be issued on an order or fiat to be made at the instance and upon the relation of the said —, against the said —, to shew by what authority he (or they) the said — claims (or claim) to be (*here state the office so claimed*) and why he (or they) the said — should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (or the party or parties entitled) should not be declared duly elected, and be admitted to the said office]; and if the said —, do pay to the said — all such costs as the said Court or the Judge presiding in Chambers, at the City of Toronto, in the County of York shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and  
year first above mentioned.

Before me, \_\_\_\_\_.

(a) A copy of the foregoing affidavit and statement must be annexed to the motion paper, form No. 5 *post*. In addition to this affidavit, a further affidavit, or affidavits, of the relator or other person, must be filed, setting forth fully and in detail, the facts and circumstances relied on in support of the application, see Rule 2.

No. 4.—*Form of Affidavit of Justification.*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

I, A— B—, of &c. —, one of the sureties in the recognizance hereto annexed, make oath and say as follows :

1. I am a freeholder (or householder as the case may be), residing at, &c.

2. I am worth property to the amount of one hundred dollars over and above what will pay all my just debts (if bail in any other action add and for every other sum for which I am now bail.)

3. I am not bail in any other action or proceeding (if so, except for E. F. at the suit of G. H. in the — Court of &c., in the sum of &c., setting out all cases in which the deponent is bail).

4. And I, C— D—, also one of the sureties in the recognizance hereunto annexed, make oath and say as follows :

5. I am a freeholder, &c. (proceed as above).

Sworn by the above named deponents,  
A— B— and C— D—, severally,  
before me, at the — of —; this — } (Signatures of deponents).  
day of —, A.D. 18—. }  
(Signature of Commissioner),  
A Commissioner, &c.

No. 5.—*Form of Motion Paper for Writ. (a)*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

Motion on behalf of Her Majesty the Queen, upon the relation of — for a writ of summons calling upon — to shew by what authority he (or they) the said (proceed as in following form.)

Signature of Counsel.

Counsel for relator.

Dated this— day of—, 18—.

(a) To this motion paper must be annexed a copy of the statement, and affidavit of the relator. See forms No. 1 and 2.

No. 6.

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No. 6.—*Form of a Judge's Fiat Ordering a Writ to Issue.*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

Upon reading the statement of —, of —, in the County of —, complaining of the undue election and usurpation of the office of —, by — [and (if so stating) that the said — (relator or other person named) was (or were) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement, and also upon reading the recognition of the said —, and sureties therein named, and the same being allowed as sufficient, I do order that a writ of summons do issue, calling upon the said — (the party whose election is complained of) to show by what authority he (or they) the said — (the party whose election is complained of) now exercises or enjoys (or exercise and enjoy) the said office [and why (if so claimed) he (or they) the said — should not be removed therefrom, and the said — (relator or other person or persons named) should not be declared duly elected, and be admitted thereto.]

Dated this — day of —, 18—.

NOTE.—If by rule of Court, the above form should be modified accordingly.

No. 7.—*Form of Writ of Summons.*

ONTARIO.

VICTORIA, by the Grace of God, &c.

To —, of —, &c., in the County (or United Counties) of —.

We command you (and each of you) that you (and each of you) be and appear before the Chief Justice of the Queen's Bench, or the Chancellor of Ontario, or the Chief Justice of the Common Pleas, or other Justice of our High Court of Justice for Ontario, presiding in Chambers, at the Judges' Chambers in the — Division of our said Court, in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice, Chancellor, or Justice by what authority you claim to use, exercise, or enjoy the office of —, which office, upon the relation of —, having, as he says, an interest in the election to the said office as a —, we are informed that you have usurped and do still usurp [and that (if so claimed) the said — (relator or party or parties mentioned) was (or were) and should have been declared duly elected and admitted thereto], and

further to do and receive all those things which our said Chief Justice, Chancellor, or Justice, shall thereupon order concerning the premises.

Witness the Honourable —, Chief Justice of the —, [or Chancellor of Ontario,] and President of our said Court, at Toronto, this — day of —, 18—, and in the — year of our reign.

No. 8.—*Form of Notice to be indorsed on, or annexed to the Writ of Summons.*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

The Queen upon the relation of —, against —.

To — and —, named in the within (or annexed) writ of summons.

The within (or annexed) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Registrar of the — Division of this Court (or with the Clerk in Chambers at the City of Toronto), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said — (the relator, or —, the party or parties, if any, alleged to be entitled) therein named, be declared duly elected, and will be admitted thereto in your place.]

A. B., in person,  
or by  
C. D., his Attorney.

The above mentioned deponents are :

—, of —.

—, of —.

—

No. 9.—*Form of Writ of Summons to a Returning Officer.*

ONTARIO.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of —, in our High Court of Justice, — Division, it hath been ordered that a writ of summons should issue to —, to show by what authority he (or they) claims

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or exercises (or claim or exercise) the office of —. And whereas it appears to our Justices of our High Court of Justice, before whom the said writ hath been made returnable (or as the case may be), that you were the Returning Officer by whom the said — hath (or have) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid: These are therefore to summon you to be and appear before the Chief Justice, of the Queen's Bench, or the Chancellor of Ontario, or the Chief Justice of the Common Pleas, or other Justice of our High Court of Justice for Ontario, presiding in Chambers, at the Judges' Chambers in and for the — Division of our said Court in our City of Toronto, on —, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

No. 10.—*Form of Minute of the Day of Service to be Written on the Summons.*

Served this — day of —, 18—.

(Signature of party serving).

No. 11.—*Form of Affidavit of Service of Writ of Summons, &c.*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

The Queen on the relation of —

against

C. D. —

I — of — in the —, (addition), make oath and say,

1. That I did on the — day of — last (or instant as the case may be) personally serve the abovenamed defendant (or defendants) with the annexed writ of summons by delivering to him (or each of them) a true copy thereof, on which said copy was indorsed (or to which said copy was annexed, as the case may be) a written notice, (a) a copy whereof is hereto annexed, and to which said copy (or copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, (b) a copy of which said copy of statement is also hereunto annexed; and I further say, that the

(a) See form No. 8, ante.

(b) See form No. 1, ante.

U. W. U. LAW

minute (or minutes) of the said service, (or services) written on the said writ of summons, was (or were) so written by me within twenty-four hours after such service.

Sworn before me at the — of —  
in the county of — this — day of —  
A. D. 18—, } (Signature of deponent.)  
(Signature of Commissioner),  
A Commissioner, &c. }

No. 12.—*Form of Appearance by a Defendant to be indorsed on the back of the Relator's Statement attached to the Motion Paper. (See R. 4.)*

The within named C. D., &c., appears, (in person or by attorney, as the case may be) to answer the grounds of objection to his election, which are stated within.

*Signature of Defendant, or his Attorney.*

No. 13.—*Form of Appearance by a Returning Officer to be indorsed on the back of the Relator's Statement attached to the Motion Paper. (See R. 6.)*

The within named E. F. appears (in person or by attorney as the case may be) to answer the grounds of objection to his conduct in reference to the election which are stated within.

*(Signature of Returning Officer, or his attorney.)*

No. 14.—*Form of Disclaimer before Writ Served. (a)*

I, A. B. do hereby disclaim all right to the office of [Township Councillor, or as the case may be [for the [Township of, or as the case may be] and all defence of any right I may have to the same.

*(Signature of party disclaiming.)*

Dated this, &c.

To the Clerk of the Corporation of—

(a) See ante Rule 11 note.

IN THE HIGH COURT OF JUSTICE.

(Or other Court in which proceedings are pending.)

against\_\_\_\_\_

I, C. D., upon whom a writ of summons in the nature of a *quo warranto* has been served for the purpose of contesting my right to the office of [Township Councillor or as the case may be] for the [Township of —, in the County of—, or as the case may be] do hereby disclaim the said office and all defence I may have to any right to the same

Dated this — day of —, &c.

To the Clerk of the Corporation of—

*If the proceedings are pending in the High Court then add, and to the Clerk of the Judge's Chambers at Osgoode Hall, Toronto.*

Or if the proceedings are pending in a County Court then add, and to the Judge of the County Court of the County of —

[L. S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith.

To the Judge of the County Court of the County of \_\_\_\_.

**GREETING :**

Whereas, upon the trial of the validity of an election of — chosen upon the — day of —, to be — for the Township of — (or as the case may be), in the County of —, and which election hath been complained of by E. F., as the relator, alleging (as the case may be), that he himself, [or that he and C. D., &c., or that C. D., &c., was (or were) duly elected, and ought to have been returned,] it hath become material to ascertain whether (here state concisely the issues to be tried); and whereas it is desired by —, our Chief Justice of —, (or Chancellor or Justice of our High Court of Justice,) before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such case, made and provided, command you, that by twelve good and lawful men of the County of —, who are in no wise akin to the said E. F., the relator in the said case, or to the said (the other party or parties, naming him or them), and who shall be sworn truly to try the truth of the said matters, you do proceed



to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (or Chancellor or Justice) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

Witness the Honourable —, Chief Justice of — and President of our said Court, at Toronto, this — day of —, in the — year of our reign.

### No. 17.—*Form of Indorsement of Verdict thereon.*

I hereby certify that on the — day of —, before me, L. M., Judge of the County Court of the County (or United Counties) of —, came as well the within named relator as the within named — (the other party or parties) by their attorneys (or as the case may be), and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

## JUDGMENTS.

### No. 18.—*Form of Judgment in favour of the Relator.*

IN THE HIGH COURT OF JUSTICE.

— DIVISION.

The Queen on the relation of —,  
against —.

Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and —, at the Judges' Chambers in the City of Toronto, before me, —, Chief Justice of the Queen's Bench (or Common Pleas or Chancellor of Ontario or one of the Justices of the High Court of Justice), came as well the above named relator by —, his attorney, as the above named — by his (or their) attorney, and service of the writ of summons hereunto annexed having been duly proved upon affidavit,\* and upon the said day and upon other days thereafter, at his Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said — of the office of —, in the said writ of summons mentioned [and (if so) the election of (the party or parties named) thereto], and the answers and proofs of the said —; and having heard the said parties by their counsel (or as the case may be), and upon due consideration of all and singular the premises, now, that is to say, this — day of —, in the year aforesaid, I do adjudge and determine:

*First*—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of — as a —

*Second*—That, &c.

*Third*—That, &c.

*Fourth*—That the said — hath (or have) usurped, and doth (or do) still usurp the said office, and that he (or they) be removed therefrom [or that the election of — to the said office was void, and that he (or they) be removed therefrom (*as the judgment may be*)]. And that the said relator (or the said [naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office] was (or were) duly elected thereto, and ought to have been returned, and is (or are) entitled in law to be received into, and to use, exercise, and enjoy the said office: And I do adjudge and determine that the said — do not in any manner concern himself (or themselves) in or about the said office, but that he (or they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (naming the relator or parties whose election is affirmed) be (or be respectively) admitted to the said office in his (or their) place or places]: And I do further order, adjudge, and determine, that the said relator do recover against the said — his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court. (a)

All which the said writ of summons, and the said judgment, and the statements, answers, and proofs of the said relator and of the said —, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

(Signature of Judge).

### No. 19.—Form of Judgment for Defendant.

(Proceed as in the foregoing form to the \*)

Thereupon now at this day, that is to say, on the — day of — aforesaid at the Judges' Chambers at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said — being seen and fully understood, I do consider and adjudge that the said office of — so claimed by him (or them) the said — be allowed and adjudged to him (or them); that the said — be dismissed and discharged of and from the premises above charged upon him (or them); and also that he (or they) the said — do recover against the said relator his (or their) costs

(a) See form to be added when costs are taxed *infra* No. 20.

by him (or them respectively) laid out and expended in defending, himself (or themselves) in this behalf. All which, &c., (as in the judgment for the relator). (a)

No. 20.—*Form to be added to Judgment when costs are taxed.*

Afterwards, that is to say, on the — day of —, in the — year of the reign of our Lady the Queen, cometh the said —, and prayeth that his (or their) said costs, so as aforesaid adjudged to him (or them), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said —, in and about his (or their) prosecution (or defence) aforesaid, [and (when the Returning Officer is a party) of the said —, in and about his defence aforesaid], so as aforesaid adjudged to him (or them), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said — at the sum of — [and the costs of the said — (when Returning Officer entitled thereto), at the sum of —], and the said — in mercy, &c.

EXECUTIONS.

No. 21.—*Form of a Writ of Mandamus to a Corporation.*

*To remove the person or persons, being less than the whole number of members of any Municipal Corporation whose election is adjudged invalid, and to admit the person or persons adjudged lawfully elected.*

VICTORIA, &c.

To the Corporation of — (the Town, Township, or City) of —.

Whereas on the — day of —, in the year of our Lord one thousand eight hundred and —, at the Judge's Chambers in the City of Toronto, before —, Chief Justice of the Queen's Bench (or Common Pleas, or the Chancellor of Ontario, or one of the Justices of our High Court of Justice for Ontario), it was by the said Chief Justice, (or Chancellor, or Justice) adjudged and determined that —, of —, had usurped, and did then usurp, the office of — [and that — was (or were) duly elected thereto, and ought to have been returned, and was (or were) entitled in law to be received into, and to use, exercise and enjoy the said office], all which has by the

(a) See next form when costs are taxed.

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said Chief Justice (*or Chancellor or Justice*) been duly certified into our High Court of Justice — Division, pursuant to the statute in that behalf. Now, we, being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself (*or themselves*) in or about the said office, but that he (*or they*) be absolutely forejudged, removed, and excluded from further using or exercising the same, under pretence of his (*or their*) election thereto.\* [And we do further command that the said (*the person or persons, naming him or them, who has or have been adjudged lawfully elected*) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you, and every of you, to obey, observe, and do all and every act, matter, and thing that may be necessary on the part of you or any of you in the premises, according to the purport, true intent, and meaning of these presents, and of the statutes in that behalf, and that you make known to our High Court of Justice — Division at Toronto, on the — day of —, how this writ shall have been executed.

Witness, &c.

### No. 22.—Form of a Writ of Mandamus to a Corporation.

When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has or have been returned, nor the person or persons claimed to be returned is or are held valid, and for a new election.

VICTORIA, &c.

To the Corporation of —, and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held.

Whereas (as in the last precedent to the asterisk, omitting the part between the brackets, and then proceed as follows :) And we do further command that you the said Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or persons*) in the place or stead of the said —, who has (*or have*) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or persons*) who shall be so elected the oath (*or oaths*), if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or persons*) so elected

into the said office, and that you, the said Corporation, do shew how this writ shall have been executed to our High Court of Justice — Division at Toronto, on the — day of —.

Witness, &c.

### No. 23.—*Form of a Writ of Mandamus to the Sheriff.*

*Where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.*

VICTORIA, &c.

To the Sheriff of the County (or United Counties) of —.

GREETING ;

Whereas (the same as in the form No. 21 to the end of the words "adjudged and determined," then say) that the election (or elections) of all the members of the Corporation of —, returned as elected at the election (or elections) of members of the said Corporation held (describing the time or times and place and places of such election or elections) was (or were) invalid or void in law, and that (naming them all) had usurped (proceeding as in form No. 21, adopting the plural form, to the asterisk, and then as follows :) And we do hereby further command you the said Sheriff, that you do, pursuant to the statute in that behalf, admit or return and swear into, or cause the said — (naming the person adjudged to have been duly elected) to be forthwith admitted or returned, and sworn into the said office, to use, exercise, and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises. And we hereby command and strictly enjoin all and every person and persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent, and meaning of these presents, and of the statutes in that behalf ; and how you shall have executed this writ make known to our High Court of Justice — Division at Toronto, on the — day of — next, and have you then there this writ.

Witness, &c.

### No. 24.—*Form of Mandamus to the Sheriff.*

*When the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.*

VICTORIA, &c.

To the Sheriff, &c., (as in the form No. 21 to the asterisk, omitting the part between the brackets, and adopting the plural form, then con-

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cluding as follows :) And that you do every act necessary to be done by you in order to the due election and admission of members of the said Corporation, in the place and stead of the persons whose elections have been so declared invalid ; and we hereby command and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end*).

Witness, &c.

No. 25.—*Form of Fi. Fa. Against Defendant for Relator's Costs.*

ONTARIO.

VICTORIA, &c.

To the Sheriff of the County of — ;

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We command you, that you levy, or cause to be levied, of the goods and chattels of C. D., late of — [*add the description of the Returning Officer, where the execution is against him*], the sum of —, which hath been lately adjudged to A. B., of —, in our High Court of Justice, — Division, at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against —, at the relation of the said A. B., for usurping the office of —, in our — of —, in your County [*add, when the Returning Officer is a party, to which proceeding the said — was made a party*], and whereof the said C. D. [&c.] is (*or are*) convicted, as in our said Court appears of record, and that you have that money before our — Division of our said Court, at Toronto, aforesaid, and have you then there this writ.

Witness, &c.

No. 26.—*Form of Fi. Fa. against the Relator for the Defendant's Costs.*

ONTARIO.

VICTORIA, &c.

To the Sheriff of the County (*or United Counties*) of —.

GREETING :

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of —, the sum of —, which hath lately been adjudged to C. D., of —, in our High Court of Justice, — Division, at Toronto, according to the form of the sta-

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tute in such case made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of — in our — of —, in your County (or Counties); [if the Returning Officer has been made a party, add here, to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office, was made a party], whereof the said A. B. is convicted, as in our Court appears of record; and that you have that money before the — Division of our said Court at Toronto, immediately after the execution thereof, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.,

*N.B.—When the Returning Officer has been made a party, and is entitled to costs, the fieri facias must be framed accordingly.*

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# IN THE QUEEN'S BENCH.

## GENERAL RULES

FOR THE TRIAL OF

# CONTROVERTED ELECTIONS

OF MEMBERS OF THE

HOUSE OF COMMONS,

Made under and by virtue of the Act of the Dominion of

Canada passed 26th May, A. D. 1874 being the

"DOMINION CONTROVERTED ELECTIONS ACT, 1874."

13TH FEBRUARY, 1875.

(36 Q. B. 441).

1. On the presentation of an Election Petition, there shall be left with the Clerk of the Court, a copy thereof, to be sent to the Returning Officer under section 8 of the Act.

Copy of petition  
to be left with  
Clerk, for Re-  
turning Officer.

Section 8 is as follows: "On the presentation of the petition, the Clerk of the Court shall send a copy thereof by mail to the Returning Officer of the Electoral District to which the petition relates, who shall forthwith publish the same in such Electoral District."

Clerk of Court  
to forward copy  
of petition to the  
Returning  
Officer.

W. J. W. W. W.



Clerk of Court is the Registrar.

The Clerk of the Court here referred to, is the Registrar of the Court of Appeal, or of the particular Division of the High Court of Justice, in which the petition is filed; see *Chy. Ord.* 618 *ante* J. A. s. 87. A petition cannot be filed in the office of a Local Registrar, Deputy Registrar, or Deputy Clerk of the Crown, *Re Prescott Election*, 9 P. R. 481. The petitioner should deposit with the Clerk, the proper postage to defray the transmission of the copy of the petition to the Returning Officer. The cost of publication of the petition by the Returning Officer under sec. 8, ss. 8 is to be borne by the petitioner see *Rule 12 post*.

Court has only jurisdiction upon petition filed.

It is only upon petition under the Act that the Courts of Justice can act: an application for a mandamus to a Judge of a County Court to proceed with a recount of votes under 41 Vict. c. 6 s. 14 (D,) was therefore refused, *Re Centre Wellington Election*, 44 Q. B. 132.

Security for costs to be given by petitioner by deposit of \$1,000 with Clerk of Court.

**Security for Costs**—At the time of the presentation of the petition \$1000 is to be deposited with the Clerk of the Court as security for costs. This sum stands as security to any witness summoned on petitioner's behalf; to the member elected whose election or return is complained of; and to the Returning Officer if his conduct is complained of, 37 Vict. c. 10, s. 8 ss. 4 (D). The deposit must be made in gold coin, or Dominion notes, *ib.* sub-s. 6. The Clerk of the Court is to give a receipt for the deposit. Under the Act of 1873 where the petition was filed against the return of two members for the same constituency it was held that it was only necessary to give the same security in amount as upon a petition against one, *Re Hamilton Election*, 10 C. L. J. N. S. 170.

Payment to Accountant held sufficient.

Where the petition was filed in the Court of Chancery, the payment of the deposit to the Accountant under *Chy. Ord.* 618 was held valid, although the account had been opened only in the name of the particular election, and not headed "Dominion Controverted Elections Account of the Court of Chancery," *Re North York Election*, *Hodg.* 749.

Effect of dissolution of Parliament, on payment out of deposit.

When, pending the petition, Parliament is dissolved before the hearing, the petition drops, and the Court will order the deposit to be returned to the petitioner, *Carter v. Mills*, 9 L. R. C. P. 117, but when Parliament was dissolved after a decision dismissing the petition with costs, and after the Judges' report had been mailed to the Speaker, but before it reached his hands, it was held that the dissolution did not deprive the respondent of his right to tax his costs *Marshall v. James*, 9 L. R. C. P. 702.

Name of Attorney to be given, if any employed.

**Name of Attorney.**—The petitioner is also on filing his petition to file a notice giving the name of some person entitled to practice as

an attorney, or whom he authorizes to act as agent, or stating that he acts for himself, and in either case giving an address for service of papers, see *post* Rule 9.

2. An Election Petition shall contain the following statements :— Election petition  
—Form of.

1. It shall state the right of the Petitioner to petition within section 7 of the Act.

2. It shall state the holding and result of the Election, and shall briefly state the facts and grounds relied on to sustain the prayer.

The persons entitled to file an Election petition under section 7 are : Petitioner—who  
may be.

1. "Some person who had a right to vote at the Election to which the petition relates ; or

2. A candidate at such Election."

It does not appear necessary that the petitioner should have actually voted, or even tendered his vote. The statute simply requires that he should have had a right to vote, or that he should have been a candidate.

For form of petition see *post* Rule 5.

Where a petition claims the seat, and the Judge at the trial decides that the candidate for whom the seat is claimed was duly elected, the decision is final, and no petition can be subsequently presented against his return : *Waygood v. James*, 4 L. R. C. P. 361. Decision of Judge  
awarding seat  
when final.

*The Judicature Act*, s. 87, provides "nothing in this Act or in the schedule hereto affects or is intended to affect, the practice or procedure in criminal matters, or matters connected with the Dominion Controverted Elections, or proceedings in the Crown or Revenue side of the Queen's Bench, or Common Pleas, Divisions." Notwithstanding this section it has been held by the Supreme Court, that a petition styled in one of the Divisions of the High Court of Justice is not irregular : *Mitchell v. Cameron*, 8 S. C. R. 126 ; 19 C. L. J. 240, overruling *Re North York Election*, *Paterson v. Mulock*, 32 C. P. 458, to the contrary. Petition entitled  
in High Court of  
Justice held valid

The Dominion Act conferring jurisdiction to try Election petitions on the Court of Common Pleas was held not to be *ultra vires* of the Dominion Parliament : *Re Niagara Election*, 29 C. P. 261 ; *Re South Ontario Election*, and *Re West Hastings Election* 1b. 270, and see *Valin v. Langlois*, 3 S. C. R. 1. Dominion Act  
conferring juris-  
diction on Pro-  
vincial Courts to  
try election peti-  
tions held valid.

Petition to be divided into paragraphs, &c.

3. The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or Judge.

Petition to conclude with prayer for relief, and to be signed by petitioner.

4. The Petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the Election should be declared void, or that a return may be enforced (as the case may be,) and shall be signed by all the Petitioners.

Objection to signature of petition, cannot be disposed of summarily.

An objection that the petition was not signed by the petitioner and that his name was used *malâ fide*, was held to be a matter of fact to be tried, and one which could not be disposed of summarily on a preliminary objection: *Re North Simcoe Election*, Hodg. 617.

5. The following form, or one to the like effect, shall be sufficient.

#### IN THE QUEEN'S BENCH.

Form of petition.

"The Dominion Controverted Elections Act, 1874,"  
Election of a Member for the House of Commons for  
(*state the place*) holden on the      day of      A.D.      .

Dominion of Canada, } The Petition of A of  
Province of Ontario, } or of A of      and of B of  
To wit: }      , (*as the case may be*),  
whose names are subscribed.

1. Your Petitioner A is a person (*or if more than one, say Your Petitioners are persons*) who was (*or were*) duly qualified to vote at the above election (*or claims to have had a right to be returned, or elected, at the above Election, or was a candidate at the above Election.*)

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2. And your Petitioners state that the Election was holden on the                      day of                      A.D.                      when AB, CD, and EF, were candidates, and the Returning Officer has returned AB, as being duly elected.

3. And your Petitioners say that (*here state the facts and grounds on which the Petitioners rely.*)

Wherefore your Petitioners pray that it may be determined that the said AB was not duly elected or returned, and that the Election was void (*or that the said EF was duly elected, and ought to have been returned, (or as the case may be).*)

(Signed,)

A.

B.

As to time within which petition and cross-petition must be presented, and further as to form of petition : see 37 Vict. c. 10, s. 8 (D) and *Valin v. Langlois*, 3 S. C. R. 90.

Time for presenting petition.

The entitling of the petition "*In the Queen's Bench*" is not now essential, a petition entitled "*In the High Court of Justice, Queen's Bench Division*," is not irregular : see *Rule 2 ante* and *Mitchell v. Cameron* there cited.

Entitling petition.

As to the time within which the trial of an election petition is to be commenced and proceeded with : see 37 Vict., c. 10, ss. 11-13 (D) and 38 Vict. c. 10, ss. 1, 2 (D).

Time for trial of petition.

Whenever three months have elapsed after an election petition has been presented, without the day of the trial being fixed, any elector may on application be substituted for the petitioner on such terms as may seem just : 38 Vict. c. 10, s. 2 (D), but when an elector applied to be substituted after the lapse of six months, on the ground, that a collusive bargain for the withdrawal of the petition, and a cross-petition, had been made between the petitioners the motion was refused the Court being of opinion that there was no sufficient evidence of collusion ; *Re Kingston Election*, 30 C. P. 389, and see 37 Vict. c. 10 s. 55 (D).

Notice of the presentation of the petition, and of the security, accompanied by a copy of the petition, is to be served on the respondents within five days after the day on which the petition is presented, or within the time prescribed by the Act, or any Rules made under the Act, or within such longer time as the Court, or a Judge, may allow, where special circumstances, or difficulty in effecting service proved. Substitutional service may be authorized when necessary, 37 Vict. c. 10, s. 9 (D) and see *Rule 15, post*.

Notice of petition, &c., to be served on respondent.

Substitutional service may be ordered.

Preliminary objections, when to be presented.

Objections to be filed, hearing of.

Objections delivered after prescribed time, not void.

Preliminary objections, when disallowed.

Preliminary objections, when disallowed.

**Preliminary objections**—Within five days after service of the notice of the presentation of the petition, the respondent may present in writing preliminary objections, setting up any grounds of insufficiency against the petition, or the petitioner, or against any further proceedings on the petition. These objections should be filed, and a further copy must also be filed for the petitioner. These objections are to be heard, and disposed of by the Court, or a Judge, in a summary manner, 37 Vict. c. 10 s. 10 (D). But preliminary objections delivered after the lapse of the five days are not void, and the time for their delivery may be extended even after the lapse of five days, they are at most irregular *Bothwell Election*, 19 C. L. J. 233; 9 P. R. 485. A preliminary objection to the jurisdiction of the Court was disallowed: see *Re Niagara Election*, 29 C. P. 261, and other cases cited, *ante* in note to Rule 2. A preliminary objection that the petitioner had been himself guilty of corrupt practices was disallowed; *Re South Huron Election*, 29 C. P. 301; *Re North Simcoe Election*, Hodg. 617; *Re Cornwall Election*, Hodg. 803. Such conduct will not disqualify a petitioner, even if proved, not even if he was a candidate: *Southampton Case*, 1 O'M. & H. 221-225. Preliminary objections to the sufficiency of the statements in a petition regarding the alleged invalidity of certain votes in favour of the respondent, on the ground of the voters being aliens and otherwise not properly qualified; and on the ground of the payment of the travelling expenses of voters; and on the ground of the incorrectness of the voters' lists, and the refusal of the returning officer to receive votes—were disallowed: *Re North Victoria Election*, Hodg. 584. Hiring teams for the conveyance of voters was subsequently declared by statute to be a corrupt practice, 37 Vict. c. 9, ss. 96, 98 (D); *Young v. Smith*, 4 S. C. R. 494. A preliminary objection that the petitioner was not duly qualified to vote; and one, that the petition was not signed by the petitioner, but that his name was used *mala fide* by other persons; were held to be matters of fact to be tried, and not such as could be disposed of in a summary manner on a preliminary objection: *Re North Simcoe Election*, Hodg. 617.

A preliminary objection against the petitioner's right to vote; on the ground that he was fraudulently placed on the assessment roll, was disallowed; and also a preliminary objection that the petition was filed in pursuance of a champertous bargain entered into between the petitioner and an association known as the Liberal Conservative Association: *Ib.*

An election was held in 1874, under the Dominion Act of 1873, at which the petitioner and the respondent were candidates, and at which the respondent was elected. His election was subsequently avoided on petition for corrupt practices by agents without the respondent's knowledge or consent. At a new election, held under the Dominion Act of 1874, the petitioner and respondent were again

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candidates, and the respondent was elected; thereupon another petition was presented charging that the respondent was guilty of corrupt practices at this last election, that he was ineligible by reason of corrupt practices at the former election; that persons reported guilty of corrupt practices at the former election trial had improperly voted at the last election, and claiming the seat for the petitioner. It was held, on preliminary objections, 1. That the two elections were one in law, although held under different statutes. 2. That the respondent was not disqualified by the corrupt practices proved against his agents at the first trial. 3. That the fact of persons having been reported by the Judge as guilty of corrupt practices at the former election, did not *ipso facto* disqualify them from voting at the second election. The report not being as to them an adjudication, because voters are not parties to the proceedings, but that evidence of corrupt practices by a voter for either candidate at a former election may be given, and upon proof thereof, his vote may be struck off: *Re Cornwall Election*, Hodg. 647.

A preliminary objection, that the petitioner, who was a candidate, had not a sufficient property qualification, was overruled: *Re North Victoria Election*, Hodg. 584. No property qualification is now requisite: 37 Vict. c. 9, s. 20 (D.)

On a preliminary objection to the sufficiency of the deposit, it appeared that the petition was filed in the Court of Chancery, that the petitioner tendered a Dominion note for \$1,000 to the Registrar of the Court, who refused to receive it, and directed it to be paid to the Accountant of the Court, which was accordingly done: (see *Chy. Ord.* 618), it was held that the payment had been properly made, and the objection was overruled: *Re North York Election*, Hodg. 749.

Where a respondent's preliminary objections have been overruled he cannot insert the same objections in his answer; if he do, they will be struck out: *Re North Oxford Election*, 8 P. R. 526.

Where the respondent, under a preliminary objection, sought to establish bribery against the petitioner personally, and the enquiry was not concluded, and the respondent subsequently consented to his election being avoided on the ground of bribery by agents without his knowledge or consent, he was ordered to pay the costs of the enquiry on the preliminary objection, as well as the general costs of the cause: *Re South Renfrew*, Hodg. 356.

**Appeals**—An appeal lies only to the Supreme Court: see 38 Vict. c. 11, s. 48 (D.) No appeal lies to the Court of Appeal from the decision of a Court, or a Judge, upon a preliminary objection in a Dominion Election: *Re Niagara Election*, 4 App. R. 407; nor to the Supreme Court: *Brassard v. Langevin*, 2 S. C. R. 317, unless

Objection to qualification of petitioner disallowed.

Preliminary objection to sufficiency of deposit for costs.

Preliminary objections overruled cannot be reiterated in respondent's answer.

Costs of preliminary objections when petition granted.

Appeals, how made.

None on preliminary objections unless sufficient to put an end to petition, if allowed.

the decision of the preliminary objection be final and conclusive, and puts an end to the petition, or would, if the objection were sustained, have done so: 42 Vict. c. 39, s. 10, (D.); *Re Gloucester Election*, 8 S. C. R. 205.

Answer to  
petition—when  
to be filed.

**Answer to Petition**—Within five days after the decision upon the preliminary objections, if presented and not allowed, or on the expiration of the time for presenting the same, if none be presented, the petitioner may file a written answer to the petition, together with a copy thereof for the petitioner; but whether the answer be filed or not, the petition is to be held to be at issue after the expiration of the time for filing the answer. And thereafter upon the application of either party the Court may fix the time and place of trial: see 37 Vict. c. 10, s. 11 (D.); 35 Vict. c. 10, ss. 1, 2 (D.) Preliminary objections overruled, cannot be reiterated in the answer; *Re North Oxford Election*, 8 P. R. 526.

When petition at  
issue.

Time of trial,  
how fixed.

Evidence not to  
be stated in  
petition.

**6. Evidence need not be stated in the Petition**, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial in the same way as in ordinary proceedings in the Superior Courts of Common Law, and upon such terms as to costs and otherwise as may be ordered.

Effect of Rule.

This Rule does not preclude the statement of evidence in the petition, it renders it unnecessary and is designed to discourage the practice: *Re South Oxford Election*, Hodg. 238. Where particulars are ordered to be delivered, evidence cannot afterwards be given of any charges not included in the particulars delivered; but the Judge at the trial may allow an amendment, giving, if necessary, time to the opposite party to meet the charge: *Re Stormont Election*, Hodg. 21; *Cahay's vote, Welland Election*, Hodg. 47, and if without amendment evidence have been given, the charge cannot be relied on in appeal: *Re South Ontario Election*, Hodg. 420: but see *Re Lincoln Election*, Hodg. 489.

When particulars  
ordered, evidence  
of charges not  
included is  
inadmissible.

Under an objection that the persons objected to were not owners, tenants, or occupiers, the votes cannot be objected to on the ground of insufficient assessment: *Re South Grenville Election*, Hodg. 174-5, nor can insufficient assessment be relied on under an objection of non-ownership, *Id.* 164-5.

List of votes  
objected to,  
when to be  
delivered.

Where the seat is claimed for an unsuccessful candidate, the list of votes objected to, required to be delivered under Rule 7 post, must be delivered as therein prescribed; and no order for the delivery of such particulars is necessary: *Re West Elgin Election*, Hodg. 223.

The petitioner will not be ordered to deliver particulars of cases of which he has no knowledge, and which can only be ascertained by an examination of the ballots, *Id.* But particulars will be ordered of the names, places of abode, and additions, of persons whose votes are alleged to have been rejected, and also of corrupt practices charged by the petitioner against the respondent, and his agents: *Re West Elgin Election*, Hodg. 223; *Beal v. Smith*, 4 L. R. C. P. 145.

Particulars when ordered.

On a charge of giving spirituous liquors in a certain tavern on polling day, during polling hours, evidence of obtaining liquor during polling hours in other taverns cannot be given: *Re South Oxford Election*, Hodg. 243.

Particulars delivered after the time limited for their delivery, but not objected to, cannot be rejected, or set aside, at the trial. An application for that purpose must be made in Chambers, before the trial: *Re North Victoria Election*, Hodg. 252, when both parties go into evidence on a charge not properly set out in the particulars, the objection to its omission from the particulars is waived: *Re Lincoln Election*, Hodg. 489.

Particulars delivered after time limited, but not objected to.

An application to amend particulars by adding charges of corrupt practice against the respondent personally, and his agents, was supported by an affidavit of the petitioner's attorney, that persons were employed to collect information, and that the new particulars only came to his knowledge three days before the application, but it was not shown that the petitioner or the persons employed could not have given the information sooner; nor was it sworn that the charges were believed to be true, nor were they otherwise confirmed, and the application was refused: *Re South Norfolk Election*, Hodg. 660.

Amendment of particulars, when refused.

In *Dickson v. Murray*, 19 C. L. J. 210, the particulars were ordered to be delivered eight clear days before the trial. As to form of order for particulars see that case.

Time for delivery of particulars.

**7.** When a Petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, and the party defending, the Election or return, shall each, six days before the day appointed for trial, deliver to the Clerk of the Court, and also at the address, if any, given by the Petitioners and Respondent, (*as the case may be*) a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Clerk of the Court shall allow inspection, and office copies of such lists to all parties concerned; and

Petitioner claiming seat for unsuccessful candidate to deliver list of votes objected to



no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court or a Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs or otherwise, as may be ordered.

Order for delivery of list unnecessary.

No order is necessary for the delivery of the list of votes objected to, as required by this Rule: *Re West Elgin Election*, Hodg. 223.

In the Common Pleas the list of votes intended to be objected to must be delivered fourteen days before the trial: see *Election Rule*, C. P. 7.

Respondent intending to object to validity of election of person for whom seat is claimed by petitioner, is to deliver list of votes objected to.

8. When the Respondent in a Petition under the Act, complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the Election of such person was undue, pursuant to the 66th section of the Act, such Respondent shall, six days before the day appointed for trial, deliver to the Clerk of the Court, and also at the address, if any, given by the Petitioner, a list of the objections to the Election upon which he intends to rely. And the Clerk of the Court shall allow inspection and office copy of such list to all parties concerned; and no evidence shall be given by a Respondent of any objection to the Election, not specified in the list, except by leave of a Judge of the Court, or upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered.

Respondent may show election of such person was undue.

The 66th section is as follows: "On the trial of a petition order this Act, complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to show that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election."

No order to deliver such list necessary.

No order is necessary for the delivery of the list of objections referred to in this Rule: see *Re West Elgin Election*, Hodg. 223.

In the Common Pleas the list of objections to the election is required to be delivered fourteen days before the trial: See *Election Rule*, C. P. 8.

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9. With the Petition, Petitioners shall leave at the office of the Clerk of the Court a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an Attorney, or whom they authorize to act as their agent, or stating that they act for themselves (*as the case may be*), and in either case giving an address within the City of Toronto, at which notices addressed to them may be left; and if no such writing be left, or address given, then all notices and proceedings may be given and served by sticking up the same at the office of the Clerk of the Court.

Petitioner to leave with Clerk of Court name of attorney if any, and address for service at time of filing petition.

The notice here prescribed ought to be delivered to the Clerk of the Court in duplicate, one copy being filed, and the other being forwarded to the Returning Officer by the Clerk of the Court, as prescribed by *Rule 12, post*.

Notice to be in duplicate.

When an agent is subsequently employed he must leave notice of his appointment with the Clerk of the Court: see *Rule, 49 post*.

When agent is subsequently employed, notice to be given.

10. Any person returned as a member may, at any time before, or after presentation of a petition against his return, send or leave at the office of the Clerk of the Court, a writing signed by him or on his behalf, appointing a person entitled to practise as an Attorney, to act as his Agent, in case there should be a Petition against him, or stating that he intends to act for himself, and in either case giving an address within the City of Toronto, at which notices may be left, and in default of such writing being left within a week after service of the Petition, notices and proceedings may be given and served respectively, by sticking up the same at the office of the Clerk of the Court.

Respondent may give notice appointing attorney to act for him, or stating his intention to act in person.

In default, proceedings may be served by posting in office.

11. The Clerk of the Court shall keep a book or books at his office, in which he shall enter all addresses and names of Agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours, without payment of any fee.

Clerk to keep book to enter addresses for service, and names of agents.

Clerk to forward  
copy of petition,  
&c., to Return-  
ing Officer.

Returning  
Officer to pub-  
lish same.

Rules 13, 14  
rescinded.

In case of  
evasion of  
service of notice  
of petition, sub-  
stituted service  
may be allowed.

Claims to deposit  
to be disposed of  
by Court, or  
Judge.

Deposit, who  
entitled to  
benefit of.

**12.** The Clerk of the Court shall, upon the presentation of the Petition, forthwith send a copy of the Petition to the Returning Officer, pursuant to section 8 of the Act, and shall therewith send the name of the Petitioner's Agent, if any, and of the address, if any, given as prescribed, and also the name of the respondent's agent, the address, if any, given as prescribed, and the Returning Officer shall forthwith publish those particulars along with the Petition. The cost of publication of this and any other matter required to be published by the Returning Officer, shall be paid by the Petitioner, or person moving in the matter, and shall form part of the general costs of the Petition.

**13.** This Rule was rescinded by Rule of Easter Term, 44 Vict. (4 June, 1881), *post* p. 686.

**14.** This Rule was rescinded by Rule of Easter Term, 44 Vict., (4 June, 1881), *post* p. 686.

**15.** In case of evasion of service, the affixing in a conspicuous place in the office of the Clerk of the Court, a notice of the Petition having been presented, stating the Petitioner, the Prayer, and the fact that money has been paid into Court as security under the Act, shall be deemed equivalent to personal service if so ordered by a Judge.

**16.** All claims at law or in equity to money deposited, or to be deposited for payment of costs, charges, and expenses payable by the Petitioners, pursuant to section 8 of the Act, shall be disposed of by the Court or a Judge.

The money deposited is security not only for the costs of respondent, but also of any witness summoned on the petitioner's behalf; of any Returning Officer whose conduct is complained of; and of any candidate not elected, whose conduct is complained of: see 37 Vict. c. 10, s. 8, ss. 4. (D.)

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**17.** Money so deposited shall, if and when the same is no longer needed, for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court or order of a Judge.

Deposit, when  
to be prepaid

**18.** Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied, or otherwise sufficiently provided for, as the Court or Judge may require.

Order for pay-  
ment out, when  
it may be made.

**19.** The rule or order may direct payment either to the party who deposited the same, or to any party entitled to receive the same.

Order for  
payment.

**20.** Upon such rule or order being made the amount may be paid by the Clerk of the Court.

Clerk to pay  
out pursuant  
to order.

**21.** The Clerk of the Court shall keep a book open to inspection of all parties concerned, in which shall be entered from time to time, the amount and the Petition to which it is applicable, which book may be inspected without payment of any fee.

Clerk to keep  
account of  
deposit

**22.** The Clerk of the Court shall make out the Election list. In it he shall insert the names of the Agents of the Petitioners and Respondent, and the addresses to which notices may be sent, (if any). The list may be inspected at any time during office hours, and shall be put up for that purpose on a notice board appropriated to proceedings under the said Act, and headed, "The Dominion Controverted Elections Act, 1874."

Clerk to make  
out list of  
petitions for  
trial

**23.** The time and place of the trial of each Election Petition shall be fixed by the Court, and notice thereof shall be given in writing by the Clerk of the Court, by affixing the same in some conspicuous place in his office, sending one copy by the post to the address

Time and place  
of trial, how to  
be notified.

given by the Petitioner, another to the address given by the Respondent (if any) and a copy by the post to the Sheriff, fifteen days before the day appointed for the trial: the Sheriff shall forthwith publish the same in the Electoral Division.

**Time for trial.** As to the time within which an election petition is to be tried, see 38 Vict. c. 10, ss. 1, 2, (D.) an order may be made extending the time: *Re West Middlesex, Walker v. Ross*, 10 P. R. 27.

**Dismissal of petition for not proceeding to trial.** Whenever three months have elapsed from the filing of a petition without a day for the trial being fixed, any elector may, on application, be substituted for the petitioner on such terms as shall be just, 38 Vict. c. 10 s. 2: see *Re Kingston Election*, 30 C. P. 389. Where six months have elapsed without the trial having been commenced, or the time extended, the respondent may move to dismiss the petition: see *Re West Middlesex, Walker v. Ross, supra*. Something more than mere convenience must be shown, to induce the Court to change the place of trial of an election petition, from the county where the election has taken place. The order must be made by the Court, and not by a Judge in Chambers: *Collins v. Price*, 5 C. P. D. 544: and see *Re South Grey Election, Hunter v. Lauder*, Hodg. 52.

**Change of place of trial.**

**Notice of trial posted in office of Clerk, to be sufficient.**

**24.** The affixing of the notice of trial at the office of the Clerk of the Court shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

The notice of trial must be affixed as prescribed by this *Rule* not later than fourteen days before that on which the trial is to take place, 37 Vict. c. 10, s. 13 (D).

**Notice of trial—form of.**

**25.** The notice of trial may be in the following form:—

#### IN THE QUEEN'S BENCH.

"The Dominion Controverted Elections Act 1874,"  
Election Petition of (*name the Electoral Division*),  
take notice that the above Petition (or Petitions) will  
be tried at                      on the                      day of                      and

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lish the

on such other subsequent days as may be needful.

Dated the                      day of  
By order,

(Signed)

A. B.

C. C. & P. Q.B.

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g the time:

f a petition  
on applica.  
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**26.** At any time after an Election Petition is filed, either party by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents, and returns, whatsoever, relating to the Election, returned to, or in possession of the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or Judge shall direct. And for the purpose of such production and inspection, and for the purposes of the trial of the Election Petition, the Clerk of the Crown in Chancery shall deliver or transmit as and when directed by rule of Court or Judge's order, the said books, lists, commissions, ballots, certificates, statements, documents, papers, and returns, in such manner, and to such officer, as by rule of Court or Judge's order shall be directed.

Production of  
documents, how  
obtained.

The said books, lists, commissions, ballots, certificates, statements, documents, papers, and returns, to be returned to the custody of the Clerk of the Crown in Chancery after the trial of the Petition, or after the purpose has been served, for which their delivery or transmission was required.

As to production by the petitioner, and respondent, and their right to examination for discovery, see 37 Vict. c. 10, ss. 14-28.

**27.** A Judge may from time to time by order made upon the application of a party to the Petition, or by notice in such form as the Judge may direct, to be sent to the Sheriff, postpone the commencement of the trial to such day as he may name, and such notice when received, shall be forthwith made public by the Sheriff.

Judge may  
adjourn trial.

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But see now 38 Vict. c. 10, ss. 1, 2. (D.)

Adjournment of trial, for non-arrival of Judge.

**28.** In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall, *ipso facto*, stand adjourned to the ensuing day, and so from day to day, until the arrival of the Judge.

Formal adjournment, when unnecessary.

**29.** No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day, until the inquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by any other of the Judges.

Trial to proceed *de die in diem*.

See 38 Vict. c. 10, s. 2, (D.) which expressly provides that the trial is to proceed *de die in diem* until the trial is over, unless on application, supported by affidavit, it be shewn that the requirements of justice render it necessary that a postponement of the case shall take place.

Special case, how stated.

**30.** The application to state a special case, may be made a rule in the Court when sitting, or by a summons before a Judge upon hearing the parties.

See 37 Vict. c. 10, s. 32. (D.)

May be reserved at trial.

A special case may be reserved at the trial only where the Judge presiding at the election trial has a serious doubt as to what the law is, or believes that the Court might entertain a different opinion from the election Judge: *Re North York Election*, Hodg. 62.

Affidavits and papers, how to be entitled.

**31.** All affidavits and papers in any Election matter in Court, or in any Court for the trial of an Election Petition may be entitled as follows:—

#### IN THE QUEEN'S BENCH.

#### THE DOMINION CONTROVERTED ELECTIONS ACT, 1874.

Election of a Member for the House of Commons  
for (*name the Electoral Division.*)

Dominion of Canada. }  
Province of Ontario. }  
To wit : }

**32.** An officer shall be appointed for each Court for the trial of an Election Petition, who shall attend at the trial in like manner as the Clerks of Assize and of Arraigns attend at the Assizes. Such officer may be called the Registrar of that Court. He, by himself, or in case of need his sufficient Deputy, shall perform all the functions incident to the officer of a Court of Record, and also such duties as may be prescribed to him.

Registrar of  
Election Court  
may be  
appointed.

Duties of  
Registrar.

**33.** The reasonable costs of any witness shall be ascertained by the Registrar of the Court, and the certificate allowing them shall be under his hand.

Costs of witnesses  
to be ascertained  
by Registrar.

**34.** The order of a Judge to compel the attendance of a person as a witness may be in the following terms :

Order to compel  
attendance of  
witness.

Court for the trial of an Election Petition for (*complete the title of the Court*), the                      day of

To A. B. (*describe the person*), you are hereby required to attend before the above Court at (*place*) on the                      day of                      , at the hour of (*or forthwith as the case may be*), to be examined as a witness in the matter of the said petition, and to attend the said Court until your examination shall have been completed.

Form of.

As witness my hand,

A. B.,  
*Judge of the said Court.*

**35.** In order to the commitment of any person for contempt, the warrant may be as follows :—

Order for com-  
mitment for  
contempt.



Form of order  
to commit for  
contempt.

At a Court holden on                      at                      for the trial  
of an Election Petition for the (*here name the Electoral  
Division*), before the Honourable                      and  
one of the Judges pursuant to the "Dominion Con-  
troverted Elections Act 1874."

Whereas A. B. has this day been guilty, and is by  
the said Court adjudged to be guilty, of a contempt  
thereof;—The said Court does therefore sentence the  
said A. B. for his said contempt to be imprisoned in  
the                      Gaol for                      , and to pay to  
Our Lady the Queen a fine of \$                      , and to be further  
imprisoned in the said gaol until the said fine be paid.  
And the Court further orders that the Sheriff of the  
said County (*or as the case may be*), and all constables  
and officers of the peace of any County or place where  
the said A. B. may be found, shall take the said A. B.  
into custody, and convey him to the said gaol, and  
there deliver him into custody of the gaoler thereof to  
undergo his said sentence. And the Court further  
orders the said gaoler to receive A. B. into his custody  
and that he shall be detained in the said gaol in pursu-  
ance of the said sentence.

Signed the                      day of                      A.D.

(*To be signed by the Judge*).

Parties liable to  
be committed for  
contempt.

Any petitioner, or respondent, disobeying a rule for the production  
of documents, may be punished as for a contempt of Court; 37 Vict.  
c. 10 s. 23 (D): any witness refusing to obey an order of a Judge to  
attend and give evidence may be in like manner punished: *Ib.* s. 50.

Publication of comments in a newspaper, with a view to influence  
the result of an election trial, is a contempt of Court and may be  
punished by attachment: see *Re Lincoln Election*, 2 App. R. 353.

Warrant of com-  
mitment, how  
to be acted on.

**36.** Such warrant may be made out and directed to  
the Sheriff, or other person having the execution of pro-  
cess of the Superior Courts, as the case may be, and to all  
Constables, and Officers of the Peace, of the County or

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place where the person adjudged guilty of contempt may be found; and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

**37.** All interlocutory questions and matters shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under "The Dominion Controverted Elections Act, 1874," as a Judge in Chambers in the ordinary proceedings of the Superior Courts.

Interlocutory applications to be disposed of in Chambers.

**38.** Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent. It shall state the ground on which the application is intended to be supported.

Withdrawal of petition, notice of.

The following form shall be sufficient:—

#### IN THE QUEEN'S BENCH.

"THE DOMINION CONTROVERTED ELECTIONS ACT. 1874. Form of.

(*Name the Electoral Division*) Petition of (*state Petitioner*) presented                      day of                      The Petitioner proposes to apply to withdraw his Petition upon the following ground (*here state the ground*), and prays that a day may be appointed for hearing his application.

Dated this                      day of                      (*Signed.*)

As to the withdrawal of petitions: see 37 Vict. c. 10 ss. 54-55, (D). No petition may be withdrawn without the leave of the Court or a Judge. Notice of the application must be published: see *post* Rule 40. On such an application any person who could have been a petitioner may apply to be substituted: see *Rule 41 post*; *Re Kingston Election*, 30 C. P. 389. When there are several petitioners all must concur in the withdrawal. If the Court or a Judge is of

When petition may be withdrawn.

Notice to be published.

When there are several petitioners all must concur.

If withdrawal  
result of corrupt  
bargain Judge  
to report.

opinion that the withdrawal of the petition is the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, the Court, or Judge, is to report such opinion to the Speaker, stating the reasons thereof and the circumstances attending the withdrawal.

Affidavit  
required on  
withdrawal of  
petition.

On an application to withdraw a petition, the petitioner and respondent must make positive affidavit that they have not been parties to any corrupt arrangement, and deny to the best of their knowledge, information, and belief, that any such arrangement has been made by their agents. The existence of any such arrangement must also be denied by the agents themselves; *Johnston v. Rankin*, 5 C. P. D. 553.

Notice to be  
left with Clerk  
of Court.

**39.** The notice of application for leave to withdraw shall be left at the office of the Clerk of the Court.

Notice of  
withdrawal to  
be served on  
Respondent and  
Returning  
Officer.

**40.** A copy of such notice of the intention of the Petitioner to apply for leave to withdraw his Petition shall be given by the Petitioner to the Respondent and to the Returning Officer, who shall make it public in the Electoral Division to which it relates; and shall be forthwith published by the Petitioner in at least one newspaper published or circulating in the place, if any.

Notice to be  
published.

The following may be a form of such notice:—

#### IN THE QUEEN'S BENCH.

"THE DOMINION CONTROVERTED ELECTIONS ACT, 1874."

Form of notice  
of withdrawal  
to be published.

In the Election Petition for  
is Petitioner, and

in which  
Respondent.

Notice is hereby given that the above Petitioner has on the \_\_\_\_\_ day of \_\_\_\_\_ lodged at the office of the Clerk of the Court, notice of an application to withdraw the Petition, of which notice the following is a copy (*set it out*), and take notice that, by the rule made by the Judges of the said Court of Queen's Bench, any person who might have been a Petitioner in respect of the said Election may, within five days after publication by the Returning Officer of this

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notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a Petitioner.

(Signed)

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must also be  
C. P. D. 553.

**41.** Any person who might have been a Petitioner in respect of the Election to which the Petition relates, may, within five days after such notice is published by the Returning officer, give notice in writing signed by him, or on his behalf, to the Clerk of the Court, of his intention to apply at the hearing to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

Application by person who might have been a petitioner, to be substituted as petitioner, how made.

withdraw  
Court.

See 37 Vic. c. 10 s. 54, (D), as to terms on which substitution may be ordered.

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Where the Court in view of the evidence adduced had recommended the withdrawal of the petition, and an elector then applied to be substituted as a petitioner, but failed to adduce any additional grounds for invalidating the election, the application of the elector to be substituted was refused, and leave to withdraw the petition was granted : *Re Peel Election*, Hodg. 485.

Substitution, when refused.

ice :—

**42.** The time and place for hearing the application shall be fixed by a Judge, and whether before the Court, or before a Judge, as he may deem advisable, but shall be not less than a week after the notice of the intention to apply has been given to the Clerk in manner as hereinbefore provided, and notice of the time and place for the hearing, shall be given to such person or persons, if any, as shall have given notice to the Clerk of the Court of an intention to apply to be substituted as Petitioners, and otherwise in such manner and at such time as the Judge directs.

Time for hearing application to withdraw, how fixed.

ACT, 1874."

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Notice to be given.

**43.** Notice of abatement of a Petition by death of the Petitioner, or surviving Petitioner, under section 56, of the said Act, shall be given by the party or person interested, in the same manner as notice of an application to withdraw a Petition ; and the time within

Abatement of petition, notice of to be given.

Proceedings  
upon abatement.

which application may be made to the Court or Judge by motion or summons of a Judge to be substituted as a Petitioner, shall be one calendar month, or such further time as, upon consideration of any special circumstances, the Court, or Judge, may allow.

See *Rules 39 and 40 ante* as to mode of publication of application to withdraw a petition.

When petition  
abates.

An election petition abates by the death of a sole petitioner, or of the survivor of several petitioners.

Effect of  
abatement.

The abatement of the petition does not affect the liability of a petitioner for costs previously incurred. On the abatement taking place, notice thereof is to be given in the Electoral District to which the petition relates, and within the time prescribed by this *Rule* any person who might have been a petitioner in respect of the election may apply to be substituted as petitioner. Such applicant must give security as upon the filing of a new petition: see 38 Vict. c. 10, s. 56, (D.)

Death of  
Respondent, or  
elevation to  
Senate, or  
declaration by  
House that his  
seat is vacant—  
effect of; pro-  
ceedings to be  
had thereon.

**44.** If the Respondent dies, or is summoned to Parliament as a Member of the Senate, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a Petitioner, under the Act in respect of the Election to which the Petition relates, may give notice of the fact in the Electoral Division, by causing such notice to be published in at least one newspaper published or circulating therein, if any, and by leaving a copy of such notice signed by him, or on his behalf, with the Returning Officer, and a like copy with the Clerk of the Court.

See 38 Vict. c. 10, s. 57 (D.); and see *Rule 47 post*.

Notice by  
Respondent that  
he does not  
intend to oppose  
petition, how  
given.

**45.** The manner and time of the Respondent giving notice to the Court that he does not intend to oppose the Petition, shall be by leaving notice thereof in writing at the office of the Clerk of the Court, signed by the Respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice.

See 38 Vict. c. 10, s. 58 (D).

**46.** Upon such notice being left at the office of the Clerk of the Court he shall forthwith send a copy thereof by the post to the Petitioner or his Agent, and to the Sheriff who shall cause the same to be published in the Electoral Division.

Copy of notice to be sent to Petitioner and Sheriff, by Clerk of Court; and Sheriff to publish same.

**47.** The time for applying to be admitted as a Respondent in either of the events mentioned in the 57th section of the Act, shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or a Judge may allow.

Time for applying to be admitted as respondent.

**48.** Costs shall be taxed by the Clerk of the Court, or, at his request, by any Master of a Superior Court, upon the rule of Court, or Judge's order, by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of Court, ordering them to be paid, or, if payable by order of a Judge, then, by execution upon such order, or in case there be money in Court available for the purpose, then to the extent of such money by order of the Court or a Judge. The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these Rules, shall be the same as those payable, if any, for like proceedings according to the present practice of this Court.

Costs, how to be taxed.

May be recovered by execution.

Office fees to be same as for other proceedings.

For tariff of fees, see ante p. 553.

**49** An Agent employed for the Petitioner or the Respondent shall forthwith leave written notice at the office of the Clerk of the Court, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

Agent employed by Petitioner or Respondent, to give notice to Clerk of Court. Service on him sufficient.

It seems an omission, not to have required this notice to be also served on the opposite party.

Copy of petition and particulars to be left for use of Judge at trial.

**50.** At the time appointed for the trial of any Election Petition, the Petitioner shall leave with the Registrar, for the use of the Judge, at the trial, fairly written on one side of the paper only—a copy of the petition and of all the proceedings thereon, which show the several matters to be tried, including the particulars of objection on either side, the correctness of which copy, in so far as the proceedings are filed with the Clerk of the Court, shall be certified by the said Clerk. The Judge may allow amendment of the said copy, or in default of of such copy being delivered, the Judge may refuse to try the Petition, or may allow a further time for delivery of the copy, or may adjourn the trial, in every case upon such terms, as to costs and otherwise, as the Judge shall see fit to impose.

Judge after trial to return to Clerk of Court evidence, &c.

**51.** After the trial of any Election Petition the Judge shall return to the Clerk of the Court the evidence and proceedings before the said Judge and his finding on the said Petition.

As to the report to be made by the Judge to the Speaker, see 38 Vict. c. 10, ss. 29-31 (D.)

Proceedings not to be defeated by formal objections.

**52.** No proceedings under "The Dominion Controverted Elections Act, 1874," shall be defeated by any formal objection.

Rules of Court, how to be published.

**53.** Any Rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up in the Office of the Clerk of the Court.

English practice, how far in force.

So far as the Rules of Court do not otherwise provide the principles, practice, and Rules in force as to Election Petitions in England on the 26th May, 1874, are to be observed: see 37 Vict. c. 10, s. 45 (D.)

Commission to examine witness may be issued.

Under this section it was held that a commission might issue to examine a witness resident abroad: see *Re Cornwall Election Petition*, 8 P. R. 64.

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RULE OF QUEEN'S BENCH AND COMMON PLEAS  
OF 13TH DECEMBER, 1878.

As of Michaelmas Term, 42 Victoria.

**54.** It is ordered by the Judges of the Courts of Queen's Bench and Common Pleas, by virtue of the Statutory powers and authority which they possess and exercise, and by virtue of the other powers and authority which the said Courts jointly or severally possess and exercise, to make rules and orders for the effectual execution of the "Dominion Controverted Elections' Act, 1874," and of any other Act of the Dominion Parliament, connected with or relating to Controverted Elections or to corrupt or other illegal practices at said Elections, or at any prior Election, or to inquiries which may be made into, or in any way concerning the same, that the procedure in the said Acts, and in each of them, respectively enacted and provided in the cases above mentioned, and in each and every of them, shall be the course of procedure in such cases in these Courts, in all respects as if the said procedure had been and was, as it now is specially provided for, prescribed and regulated by the said Courts, and by each of them, in the like manner and to the like tenor and effect as the said procedure in such cases is prescribed and enacted by the said respective Acts.

Practice laid  
down by  
Dominion Acts  
adopted.

RULE OF QUEEN'S BENCH OF 4TH JUNE, 1881.

Easter Term, 44 Victoria.

**55.** It is ordered by the Court that *Rules* number thirteen and fourteen of the General Rules for the trial of Controverted Elections of members of the House of Commons, made during Hilary Term, 38 Victoria, A. D., 1875, be and the same are hereby rescinded.

Rules 13 and 14  
rescinded.



# IN THE COMMON PLEAS.

## GENERAL RULES

FOR THE TRIAL OF

# CONTROVERTED ELECTIONS

OF MEMBERS OF THE

## HOUSE OF COMMONS,

Made under and by virtue of the Act of the Dominion of Canada passed 26th May, A. D. 1874 being the "DOMINION CONTROVERTED ELECTIONS ACT, 1874," and under all other powers vested in and inherent in the Court.

27TH DECEMBER, 1878.

(29 C. P. 433).

It is ordered by the Court that :

Copy of petition to be left with Clerk, for Returning Officer.

1. On the presentation of an Election Petition, there shall be left with the Clerk of the Court, a copy thereof, to be sent to the Returning Officer under section 8 of the Act.

Clerk of Court to forward copy of petition to the Returning Officer.

Section 8 is as follows : " On the presentation of the petition, the Clerk of the Court shall send a copy thereof by mail to the Returning Officer of the Electoral District to which the petition relates, who shall forthwith publish the same in such Electoral District."

The Clerk of the Court here referred to, is the Registrar of the Court of Appeal, or of the particular Division of the High Court of Justice, in which the petition is filed; see *Chy. Ord.* 618 *ante*; *J. A. s.* 87. A petition cannot be filed in the office of a Local Registrar, Deputy Registrar, or Deputy Clerk of the Crown, *Re Prescott Election*, 9 P. R. 481. The petitioner should deposit with the Clerk, the proper postage to defray the transmission of the copy of the petition to the Returning Officer. The cost of publication of the petition by the Returning Officer under sec. 8, s.s. 8 is to be borne by the petitioner see *Rule 12 post*.

Clerk of Court is the Registrar.

It is only upon petition under the Act that the Courts of Justice can act: an application for a mandamus to a Judge of a County Court to proceed with a recount of votes under 41 Vict. c. 6 s. 14 (D.) was therefore refused, *Re Centre Wellington Election*, 44 Q. B. 132.

Court has only jurisdiction upon petition filed.

The filing of a petition in the wrong office cannot be cured by amendment: *Re Prescott Election*, 9 P. R. 481.

**Security for Costs**—At the time of the presentation of the petition \$1000 is to be deposited with the Clerk of the Court as security for costs. This sum stands as security to any witness summoned on petitioner's behalf; to the member elected whose election or return is complained of; and to the Returning Officer if his conduct is complained of, 37 Vict. c. 10, s. 8 ss. 4 (D). The deposit must be made in gold coin, or Dominion notes, *ib.* sub-s. 6. The Clerk of the Court is to give a receipt for the deposit. Under the Act of 1873 where the petition was filed against the return of two members for the same constituency it was held that it was only necessary to give the same security in amount as upon a petition against one, *Re Hamilton Election*, 10 C. L. J. N. S. 170.

Security for costs to be given by petitioner by deposit of \$1,000 with Clerk of Court.

Where the petition was filed in the Court of Chancery, the payment of the deposit to the Accountant under *Chy. Ord.* 618 was held valid, although the account had been opened only in the name of the particular election, and not headed "Dominion Controversed Elections Account of the Court of Chancery," *Re North York Election*, *Hodg.* 749.

Payment to Accountant held sufficient.

When, pending the petition, Parliament is dissolved before the hearing, the petition drops, and the Court will order the deposit to be returned to the petitioner, *Carter v. Milla*, 9 L. R. C. P. 117, but when Parliament was dissolved after a decision dismissing the petition with costs, and after the Judges' report had been mailed to the Speaker, but before it reached his hands, it was held that the dissolution did not deprive the respondent of his right to tax his costs *Marshall v. James*, 9 L. R. C. P. 702.

Effect of dissolution of Parliament, on payment out of deposit.

**Name of Attorney**.—The petitioner is also on filing his petition to file a notice giving the name of some person entitled to practise as

Name of Attorney to be given, if any employed.

W. H. O. L. A. M. J. N. S.

an attorney, or whom he authorizes to act as agent, or stating that he acts for himself, and in either case giving an address for service of papers, see *post* Rule 9.

Election petition  
—Form of.

**2.** An Election Petition shall contain the following statements :—

1. It shall state the right of the Petitioner to petition within section 7 of the Act.

2. It shall state the holding and result of the Election, and shall briefly state the facts and grounds relied on to sustain the prayer.

Petitioner—who  
may be.

The persons entitled to file an Election petition under section 7 are :

1. "Some person who had a right to vote at the Election to which the petition relates ; or

2. A candidate at such Election."

It does not appear necessary that the petitioner should have actually voted, or even tendered his vote. The statute simply requires that he should have had a right to vote, or that he should have been a candidate.

For form of petition see *post* Rule 5.

Decision of Judge  
awarding seat  
when final.

Where a petition claims the seat, and the Judge at the trial decides that the candidate for whom the seat is claimed was duly elected, the decision is final, and no petition can be subsequently presented against his return : *Waygood v. James*, 4 L. R. C. P. 361.

Petition entitled  
in High Court of  
Justice held valid

*The Judicature Act*, s. 87, provides "nothing in this Act or in the schedule hereto affects or is intended to affect, the practice or procedure in criminal matters, or matters connected with the Dominions Controversed Elections, or proceedings in the Crown or Revenue side of the Queen's Bench, or Common Pleas, Divisions." Notwithstanding this section it has been held by the Supreme Court, that a petition styled in one of the Divisions of the High Court of Justice is not irregular : *Mitchell v. Cameron*, 8 S. C. R. 126 ; 19 C. L. J. 240, overruling *Re North York Election*, *Paterson v. Mulock*, 32 C. P. 458, to the contrary, and see *Re Russell Election*, *Henderson v. Dickenson*, 1 O. R. 439.

Dominion Act  
conferring juris-  
diction on Pro-  
vincial Courts to  
try election peti-  
tions held valid.

The Dominion Act conferring jurisdiction to try Election petitions on the Court of Common Pleas was held not to be *ultra vires* of the Dominion Parliament : *Re Niagara Election*, 29 C. P. 261 ; *Re Simcoe Election*, 30 C. P. 270, and *Re Ontario Election*, and *Re West Hastings Election* 1b. 270, and *Valin v. Langlois*, 3 S. C. R. 1.

**3.** The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or Judge.

Petition to be divided into paragraphs, &c.

**4.** The Petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the Election should be declared void, or that a return may be enforced (as the case may be,) and shall be signed by all the Petitioners.

Petition to conclude with prayer for relief, and to be signed by petitioner.

An objection that the petition was not signed by the petitioner, and that his name was used *malâ fide*, was held to be a matter of fact to be tried, and one which could not be disposed of summarily on a preliminary objection : *Re North Simcoe Election*, Hodg. 617.

Objection to signature of petition, cannot be disposed of summarily.

**5.** The following form, or one to the like effect, shall be sufficient.

IN THE COMMON PLEAS.

"The Dominion Controverted Elections Act, 1874,"  
Election of a Member for the House of Commons for  
(state the place) holden on the      day of      A.D. 18      .

Form of petition.

The Dominion of Canada, } The Petition of A of  
Province of Ontario, } or of A of      and of B of  
To wit : } , (as the case may be),  
whose names are subscribed.

1. Your Petitioner A is a person (or if more than one, say Your Petitioners are persons) who was (or were) duly qualified to vote at the above election (or claims to have had a right to be returned, or elected, at the above Election, or was a candidate at the above Election.)

U. N. U. U. U.

2. And your Petitioners state that the Election was holden on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ when AB, CD, and EF, were candidates, and the Returning Officer has returned AB, as being duly elected.

3. And your Petitioners say that (*here state the facts and grounds on which the Petitioners rely.*)

Wherefore your Petitioners pray that it may be determined that the said AB was not duly elected or returned, and that the Election was void (*or that the said EF was duly elected, and ought to have been returned, (as the case may be).*)

(Signed,)

A.  
B.

Time for presenting petition.

As to time within which petition and cross-petition must be presented, and further as to form of petition : see 37 Vict. c. 10, s. 8 (D) and *Valin v. Langlois*, 3 S. C. R. 90.

Entitling petition.

The entitling of the petition "*In the Queen's Bench*" is not now essential, a petition entitled "*In the High Court of Justice, Queen's Bench Division*," is not irregular : see *Rule 2 ante*, and *Mitchell v. Cameron* there cited.

Time for trial of petition.

As to the time within which the trial of an election petition is to be commenced and proceeded with : see 37 Vict., c. 10, ss. 11-13 (D) and 38 Vict. c. 10, ss. 1, 2 (D).

Whenever three months have elapsed after an election petition has been presented, without the day of the trial being fixed, any elector may on application be substituted for the petitioner on such terms as may seem just : 38 Vict. c. 10, s. 2 (D), but when an elector applied to be substituted after the lapse of six months, on the ground, that a collusive bargain for the withdrawal of the petition, and a cross-petition, had been made between the petitioners the motion was refused the Court being of opinion that there was no sufficient evidence of collusion ; *Re Kingston Election*, 30 C. P. 389, and see 37 Vict. c. 10 s. 55 (D).

Notice of petition, &c., to be served on respondent.

Notice of the presentation of the petition, and of the security, accompanied by a copy of the petition, is to be served on the respondents within five days after the day on which the petition is presented, or within the time prescribed by the Act, or any Rules made under the Act, or within such longer time as the Court, or a Judge, may allow, where special circumstances, or difficulty in effecting service proved. Substitutional service may be authorized when necessary. 37 Vict. c. 10, s. 9 (D) and see *Rule 15, post*.

Substitutional service may be ordered.

**Preliminary objections**—Within five days after service of the notice of the presentation of the petition, the respondent may present in writing preliminary objections, setting up any grounds of insufficiency against the petition, or the petitioner, or against any further proceedings on the petition. These objections should be filed, and a further copy must also be filed for the petitioner. These objections are to be heard, and disposed of by the Court, or a Judge, in a summary manner, 37 Vict. c. 10 s. 10 (D). But preliminary objections delivered after the lapse of the five days are not void, and the time for their delivery may be extended even after the lapse of five days, they are at most irregular *Bothwell Election*, 19 C. L. J. 233; 9 P. R. 485. A preliminary objection to the jurisdiction of the Court was disallowed: see *Re Niagara Election*, 29 C. P. 261, and other cases cited *ante*, in note to Rule 2. A preliminary objection that the petitioner had been himself guilty of corrupt practices was disallowed; *Re South Huron Election*, 29 C. P. 301; *Re North Simcoe Election*, Hodg. 617; *Re Cornwall Election*, Hodg. 803. Such conduct will not disqualify a petitioner, even if proved, not even if he was a candidate: *Southampton Case*, 1 O'M. & H. 221-225. Preliminary objections to the sufficiency of the statements in a petition regarding the alleged invalidity of certain votes in favour of the respondent, on the ground of the voters being aliens and otherwise not properly qualified; and on the ground of the payment of the travelling expenses of voters; and on the ground of the incorrectness of the voters' lists, and the refusal of the returning officer to receive votes—were disallowed: *Re North Victoria Election*, Hodg. 584. Hiring teams for the conveyance of voters was subsequently declared by statute to be a corrupt practice, 37 Vict. c. 9, ss. 96, 98 (D); *Young v. Smith*, 4 S. C. R. 494. A preliminary objection that the petitioner was not duly qualified to vote; and one, that the petition was not signed by the petitioner, but that his name was used *mau fide* by other persons; were held to be matters of fact to be tried, and not such as could be disposed of in a summary manner on a preliminary objection: *Re North Simcoe Election*, Hodg. 617.

A preliminary objection against the petitioner's right to vote, on the ground that he was fraudulently placed on the assessment roll, was disallowed; and also a preliminary objection that the petition was filed in pursuance of a champertous bargain entered into between the petitioner and an association known as the Liberal Conservative Association: *Ib.*

An election was held in 1874, under the Dominion Act of 1873, at which the petitioner and the respondent were candidates, and at which the respondent was elected. His election was subsequently avoided on petition for corrupt practices by agents without the respondent's knowledge or consent. At a new election, held under the Dominion Act of 1874, the petitioner and respondent were again

Preliminary objections, when to be presented.

Objections to be filed, hearing of. Objections delivered after prescribed time, not void.

Preliminary objections, when disallowed.

candidates, and the respondent was elected; thereupon another petition was presented charging that the respondent was guilty of corrupt practices at this last election, that he was ineligible by reason of corrupt practices at the former election; that persons reported guilty of corrupt practices at the former election trial had improperly voted at the last election, and claiming the seat for the petitioner. It was held, on preliminary objections, 1. That the two elections were one in law, although held under different statutes. 2. That the respondent was not disqualified by the corrupt practices proved against his agents at the first trial. 3. That the fact of persons having been reported by the Judge as guilty of corrupt practices at the former election, did not *ipso facto* disqualify them from voting at the second election. The report not being as to them an adjudication, because voters are not parties to the proceedings, but that evidence of corrupt practices by a voter for either candidate at a former election may be given, and upon proof thereof, his vote may be struck off: *Re Cornwall Election*, Hodg. 647.

A preliminary objection, that the petitioner, who was a candidate, had not a sufficient property qualification, was overruled: *Re North Victoria Election*, Hodg. 584. No property qualification is now requisite: 37 Vict. c. 9, s. 20 (D.)

On a preliminary objection to the sufficiency of the deposit, it appeared that the petition was filed in the Court of Chancery, that the petitioner tendered a Dominion note for \$1,000 to the Registrar of the Court, who refused to receive it, and directed it to be paid to the Accountant of the Court, which was accordingly done: (see *Chy. Ord.* 618), it was held that the payment had been properly made, and the objection was overruled: *Re North York Election*, Hodg. 749.

Where a respondent's preliminary objections have been overruled he cannot insert the same objections in his answer; if he do, they will be struck out: *Re North Oxford Election*, 8 P. R. 526.

Where the respondent, under a preliminary objection, sought to establish bribery against the petitioner personally, and the enquiry was not concluded, and the respondent subsequently consented to his election being avoided on the ground of bribery by agents without his knowledge or consent, he was ordered to pay the costs of the enquiry on the preliminary objection, as well as the general costs of the cause: *Re South Renfrew*, Hodg. 356; but see *Re South Huron Election*, 29 C. P. 301; *Re North Simcoe Election*, Hodg. 619; *Re Cornwall Election*, Hodg. 803.

**Appeals**—An appeal lies only to the Supreme Court: see 38 Vict. c. 11, s. 48 (D.) No appeal lies to the Court of Appeal from the decision of a Court, or a Judge, upon a preliminary objection in a Dominion Election: *Re Niagara Election*, 4 App. R. 407; nor to the Supreme Court: *Brassard v. Langevin*, 2 S. C. R. 317, unless

Objection to qualification of petitioner disallowed.

Preliminary objection to sufficiency of deposit for costs.

Preliminary objections overruled cannot be reiterated in respondent's answer.

Costs of preliminary objections when petition granted.

Appeals, how made.

None on preliminary objections unless sufficient to put an end to petition, if allowed.

the decision of the preliminary objection be final and conclusive, and puts an end to the petition, or would, if the objection were sustained, have done so : 42 Vict. c. 39, s. 10, (D.) ; *Re Gloucester Election*, 8 S. C. R. 205.

**Answer to Petition**—Within five days after the decision upon the preliminary objections, if presented and not allowed, or on the expiration of the time for presenting the same, if none be presented, the petitioner may file a written answer to the petition, together with a copy thereof for the petitioner ; but whether the answer be filed or not, the petition is to be held to be at issue after the expiration of the time for filing the answer. And thereafter upon the application of either party the Court may fix the time and place of trial : see 37 Vict. c. 10, s. 11 (D.) ; 38 Vict. c. 10, ss. 1, 2 (D.) Preliminary objections overruled, cannot be reiterated in the answer : *Re North Oxford Election*, 8 P. R. 526.

Answer to petition—when to be filed.

When petition at issue.

Time of trial, how fixed.

**6. Evidence need not be stated in the Petition**, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial in the same way as in ordinary proceedings in the Superior Courts of Common Law, and upon such terms as to costs and otherwise as may be ordered.

Evidence not to be stated in petition.

This Rule does not preclude the statement of evidence in the petition, it renders it unnecessary and is designed to discourage the practice : *Re South Oxford Election*, Hodg. 238. Where particulars are ordered to be delivered, evidence cannot afterwards be given of any charges not included in the particulars delivered ; but the Judge at the trial may allow an amendment, giving, if necessary, time to the opposite party to meet the charge : *Re Stormont Election*, Hodg. 21 ; *Cahen's vote, Welland Election*, Hodg. 47, and if without amendment evidence have been given, the charge cannot be relied on in appeal : *Re South Ontario Election*, Hodg. 420 : but see *Re Lincoln Election*, Hodg. 489.

Effect of Rule.

When particulars ordered, evidence of charges not included is inadmissible.

Under an objection that the persons objected to were not owners, tenants, or occupiers, the votes cannot be objected to on the ground of insufficient assessment : *Re South Grenville Election*, Hodg. 174-5, nor can insufficient assessment be relied on under an objection of non-ownership, *Ib.* 164-5.

Where the seat is claimed for an unsuccessful candidate, the list of votes objected to, required to be delivered under Rule 7 *post*, must be delivered as therein prescribed ; and no order for the delivery of such particulars is necessary : *Re West Elgin Election*, Hodg. 223.

List of votes objected to, when to be delivered.



**Particulars when ordered.**

The petitioner will not be ordered to deliver particulars of cases of which he has no knowledge, and which can only be ascertained by an examination of the ballots, *ib.* But particulars will be ordered of the names, places of abode, and additions, of persons whose votes are alleged to have been rejected, and also of corrupt practices charged by the petitioner against the respondent, and his agents : *Re West Elgin Election*, Hodg. 223 ; *Beal v. Smith*, 4 L. R. C. P. 145.

On a charge of giving spirituous liquors in a certain tavern on polling day, during polling hours, evidence of obtaining liquor during polling hours in other taverns cannot be given : *Re South Oxford Election*, Hodg. 243.

**Particulars delivered after time limited, but not objected to.**

Particulars delivered after the time limited for their delivery, but not objected to, cannot be rejected, or set aside, at the trial. An application for that purpose must be made in Chambers, before the trial : *Re North Victoria Election*, Hodg. 252, when both parties go into evidence on a charge not properly set out in the particulars, the objection to its omission from the particulars is waived : *Re Lincoln Election*, Hodg. 489.

**Amendment of particulars, when refused.**

An application to amend particulars by adding charges of corrupt practice against the respondent personally, and his agents, was supported by an affidavit of the petitioner's attorney, that persons were employed to collect information, and that the new particulars only came to his knowledge three days before the application, but it was not shown that the petitioner or the persons employed could not have given the information sooner ; nor was it sworn that the charges were believed to be true, nor were they otherwise confirmed, and the application was refused : *Re South Norfolk Election*, Hodg. 660.

**Time for delivery of particulars.**

In *Dickson v. Murray*, 19 C. L. J. 210, the particulars were ordered to be delivered eight clear days before the trial. As to form of order for particulars see that case.

**Petitioner claiming seat for unsuccessful candidate to deliver list of votes objected to.**

7. When a Petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, and the party defending, the Election or return, shall each, fourteen days before the day appointed for trial, deliver to the Clerk of the Court, and also at the address, if any, given by the Petitioners and Respondent, (*as the case may be*) a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Clerk of the Court shall allow inspection, and office copies of such lists to all parties concerned ; and

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no evidence shall be given against the validity of any vote, nor upon any heads of objection not specified in the list, except by leave of the Court or a Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs or otherwise, as may be ordered.

No order is necessary for the delivery of the list of votes objected to, as required by this *Rule*: *Re West Elgin Election*, Hodg. 223.

Order for  
delivery of list  
unnecessary.

In the Queen's Bench the list of votes intended to be objected to must be delivered six days before the trial: see *Election Rule*, Q. B. 7.

8. When the Respondent in a Petition under the Act, complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the Election of such person was undue, pursuant to the 66th section of the Act, such Respondent shall, fourteen days before the day appointed for trial, deliver to the Clerk of the Court, and also at the address, if any, given by the Petitioner, a list of the objections to the Election upon which he intends to rely. And the Clerk of the Court shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a Respondent of any objection to the Election, not specified in the list, except by leave of a Judge of the Court, or upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered.

Respondent  
intending to  
object to validity  
of election of  
person for whom  
seat is claimed  
by petitioner,  
is to deliver list  
of votes objected  
to.

The 66th section is as follows: "On the trial of a petition order this Act, complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to show that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election."

Respondent may  
show election of  
such person was  
undue.

No order is necessary for the delivery of the list of objections referred to in this *Rule*: see *Re West Elgin Election*, Hodg. 223.

No order to  
deliver such  
list necessary.

In the Queen's Bench the list of objections to the election is required to be delivered six days before the trial: see *Election Rule*, Q. B. 8.

Petitioner to leave with Clerk of Court name of attorney if any, and address for service at time of filing petition.

9. With the Petition, Petitioners shall leave at the office of the Clerk of the Court a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an Attorney, or whom they authorize to act as their agent, or stating that they act for themselves (*as the case may be*), and in either case giving an address within the City of Toronto, to, at which notices addressed to them may be left; and if no such writing be left, or address given, then all notices and proceedings may be given and served by sticking up the same at the office of the Clerk of the Court.

Notice to be in duplicate.

The notice here prescribed ought to be delivered to the Clerk of the Court in duplicate, one copy being filed, and the other being forwarded to the Returning Officer by the Clerk of the Court, as prescribed by *Rule 12, post*.

When agent is subsequently employed, notice to be given.

When an agent is subsequently employed he must leave notice of his appointment with the Clerk of the Court: see *Rule, 49 post*.

Respondent may give notice appointing attorney to act for him, or stating his intention to act in person.

10. Any person returned as a member may, at any time before, or after presentation of a petition against his return, send or leave at the office of the Clerk of the Court, a writing signed by him or on his behalf, appointing a person entitled to practise as an Attorney, to act as his Agent, in case there should be a Petition against him, or stating that he intends to act for himself, and in either case giving an address within the City of Toronto, at which notices may be left, and in default of such writing being left within a week after service of the Petition, notices and proceedings may be given and served respectively, by sticking up the same at the office of the Clerk of the Court.

In default, proceedings may be served by posting in office.

Clerk to keep book to enter addresses for service, and names of agents.

11. The Clerk of the Court shall keep a book or books at his office, in which he shall enter all addresses and names of Agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours, without payment of any fee.

**12.** The Clerk of the Court shall, upon the presentation of the Petition, forthwith send a copy of the Petition to the Returning Officer, pursuant to section 8 of the Act, and shall therewith send the name of the Petitioner's Agent, if any, and of the address, if any, given as prescribed, and also the name of the respondent's agent, the address, if any, given as prescribed, and the Returning Officer shall forthwith publish those particulars along with the Petition. The cost of publication of this and any other matter required to be published by the Returning Officer, shall be paid by the Petitioner, or person moving in the matter, and shall form part of the general costs of the Petition.

Clerk to forward copy of petition, &c., to Returning Officer.

Returning Officer to publish same.

**13.** The time for giving notice of the presentation of a Petition, shall be five days, exclusive of the day of presentation.

Time for giving notice of presentation of petition.

A similar *Rule* was formerly in force in the Queen's Bench, but was rescinded by *Rule* of E. T. 44 Viet.

**14.** Where the Respondent has named an Agent or, given an address, the service of an Election Petition may be, by delivery of it to the Agent, or by posting it in a registered letter to the address given, at such a time that, in the ordinary course of post, it would be delivered within the prescribed time.

Where Respondent has named agent, or given address for service, petition may be served on agent, or at address given.

In other cases the service must be personal on the Respondent, unless a Judge, on an application made to him not later than five days after the Petition is presented, on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service, and cause the matter to come to the knowledge of the Respondent, in which case the said Judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

In other cases service of petition to be personal, unless substituted service allowed by Judge.

A similar *Rule* was formerly in force in the Queen's Bench but was rescinded by *Rule* of E. T. 44 Viet.

In case of evasion of service of notice of petition, substituted service may be allowed.

**15.** In case of evasion of service, the affixing in a conspicuous place in the office of the Clerk of the Court, a notice of the Petition having been presented, stating the Petitioner, the Prayer, and the fact that money has been paid into Court as security under the Act, shall be deemed equivalent to personal service if so ordered by a Judge.

Claims to deposit to be disposed of by Court, or Judge.

**16.** All claims at law or in equity to money deposited, or to be deposited for payment of costs, charges, and expenses payable by the Petitioners, pursuant to section 8 of the Act, shall be disposed of by the Court or a Judge.

Deposit, who entitled to benefit of.

The money deposited is security not only for the costs of respondent, but also of any witness summoned on the petitioner's behalf; of any Returning Officer whose conduct is complained of; and of any candidate not elected, whose conduct is complained of: see 37 Vict. c. 10, s. 8, ss. 4. (D.)

Deposit, when to be prepaid

**17.** Money so deposited shall, if and when the same is no longer needed, for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court or order of a Judge.

Order for payment out, when it may be made.

**18.** Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied, or otherwise sufficiently provided for, as the Court or Judge may require.

Order for payment.

**19.** The rule or order may direct payment either to the party who deposited the same, or to any party entitled to receive the same.

Clerk to pay out pursuant to order.

**20.** Upon such rule or order being made the amount may be paid by the Clerk of the Court.

Clerk to keep account of deposit

**21.** The Clerk of the Court shall keep a book open to inspection of all parties concerned, in which shall be

entered from time to time, the amount and the Petition to which it is applicable, which book may be inspected without payment of any fee.

**22.** The Clerk of the Court shall make out the Election list. In it he shall insert the names of the Agents of the Petitioners and Respondent, and the addresses to which notices may be sent, (if any). The list may be inspected at any time during office hours, and shall be put up for that purpose on a notice board appropriated to proceedings under the said Act, and headed, "The Dominion Controverted Elections Act, 1874."

Clerk to make out list of petitions for trial

**23.** The time and place of the trial of each Election Petition shall be fixed by the Court, and notice thereof shall be given in writing by the Clerk of the Court, by affixing the same in some conspicuous place in his office, sending one copy by the post to the address given by the Petitioner, another to the address given by the Respondent (if any) and a copy by the post to the Sheriff, fifteen days before the day appointed for the trial: the Sheriff shall forthwith publish the same in the Electoral Division.

Time and place of trial, how to be notified.

As to the time within which an election petition is to be tried, see 38 Vict. c. 10, ss. 1, 2, (D.) an order may be made extending the time: *Re West Middlesex, Walker v. Ross*, 10 P. R. 27.

Time for trial.

Whenever three months have elapsed from the filing of a petition without a day for the trial being fixed, any elector may, on application, be substituted for the petitioner on such terms as shall be just, 38 Vict. c. 10 s. 2: see *Re Kingston Election*, 30 C. P. 389. Where six months have elapsed without the trial having been commenced, or the time extended, the respondent may move to dismiss the petition: see *Re West Middlesex, Walker v. Ross*, *supra*. Something more than mere convenience must be shown, to induce the Court to change the place of trial of an election petition, from the county where the election has taken place. The order must be made by the Court, and not by a Judge in Chambers: *Collins v. Price*, 5 C. P. D. 544: and see *Re South Grey Election, Hunter v. Lauder*, *Hodg*, 52.

Dismissal of petition for not proceeding to trial.

Change of place of trial.

Notice of trial  
posted in office  
of Clerk, to be  
sufficient.

**24.** The affixing of the notice of trial at the office of the Clerk of the Court shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

The notice of trial must be affixed as prescribed by this Rule not later than fourteen days before that on which the trial is to take place, 37 Vict. c. 10, s. 13 (D).

Notice of trial—  
form of.

**25.** The notice of trial may be in the following form:—

#### IN THE COMMON PLEAS.

"The Dominion Controverted Elections Act 1874,"  
Election Petition of (*name the Electoral Division*),  
take notice that the above Petition (*or Petitions*) will  
be tried at                      on the                      day of                      and

on such other subsequent days as may be needful.

Dated the                      day of                      A.D. 18                      .

By order,

(Signed)

A. B.

C. C. & P. C. P.

Production of  
documents, how  
obtained.

**26.** At any time after an Election Petition is filed, either party by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents and returns, whatsoever, relating to the Election, returned to, or in possession of the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or Judge shall direct. And for the purpose of such production and inspection and for the purposes of the trial of the Election Petition, the Clerk of the Crown in Chancery shall deliver or transmit as and when directed by rule of Court or

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Judge's order, the said books, lists, commissions, ballots, certificates, statements, documents, papers, and returns, in such manner, and to such officer, as by rule of Court or Judge's order shall be directed.

The said books, lists, commissions, ballots, certificates, statements, documents, papers, and returns, to be returned to the custody of the Clerk of the Crown in Chancery after the trial of the Petition, or after the purpose has been served, for which their delivery or transmission was required.

As to production by the petitioner, and respondent, and their right to examination for discovery, see 37 Vict. c. 10, ss. 14-28.

**27.** A Judge may from time to time by order made upon the application of a party to the Petition, or by notice in such form as the Judge may direct, to be sent to the Sheriff, postpone the commencement of the trial to such day as he may name, and such notice when received, shall be forthwith made public by the Sheriff.

Judge may  
adjourn trial.

But see now 38 Vict. c. 10, ss. 1, 2. (D.)

**28.** In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall, *ipso facto*, stand adjourned to the ensuing day, and so from day to day, until the arrival of the Judge.

Adjournment of  
trial, for non-  
arrival of Judge.

**29.** No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day, until the inquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by any other of the Judges.

Formal adjourn-  
ment, when un-  
necessary.

See 38 Vict. c. 10, s. 2, (D.) which expressly provides that the trial is to proceed *de die in diem* until the trial is over, unless on

Trial to proceed  
*de die in diem*.



application, supported by affidavit, it be shewn that the requirements of justice render it necessary that a postponement of the case shall take place.

Special case,  
how stated.

**30.** The application to state a special case, may be made a rule in the Court when sitting, or by a summons before a Judge upon hearing the parties.

See 37 Vict. c. 10, s. 32. (D.)

May be reserved  
at trial.

A special case may be reserved at the trial only where the Judge presiding at the election trial has a serious doubt as to what the law is, or believes that the Court might entertain a different opinion from the election Judge: *Re North York Election*, Hodge, 62.

Affidavits and  
papers, how to  
be entitled.

**31.** All affidavits and papers in any Election matter in Court, or in any Court for the trial of an Election Petition may be entitled as follows:—

#### IN THE COMMON PLEAS.

#### THE DOMINION CONTROVERTED ELECTIONS ACT, 1874.

Election of a Member of the House of Commons  
for (*name the Electoral Division.*)

Dominion of Canada. )  
Province of Ontario. )  
To wit: )

Registrar of  
Election Court  
may be  
appointed.

**32.** An officer shall be appointed for each Court for the trial of an Election Petition, who shall attend at the trial in like manner as the Clerks of Assize and of Arraignment attend at the Assizes. Such officer may be called the Registrar of that Court. He, by himself, or in case of need his sufficient Deputy, shall perform all the functions incident to the officer of a Court of Record, and also such duties as may be prescribed to him.

Duties of  
Registrar.

Costs of witnesses  
to be ascertained  
by Registrar.

**33.** The reasonable costs of any witness shall be ascertained by the Registrar of the Court, and the certificate allowing them shall be under his hand.

**34.** The order of a Judge to compel the attendance of a person as a witness may be in the following terms : Order to compel attendance of witness.

Court for the trial of an Election Petition for (*complete the title of the Court*), the day of

To A. B. (*describe the person*), you are hereby required Form of. to attend before the above Court at (*place*) on the day of , at the hour of (*or forthwith as the case may be*), to be examined as a witness in the matter of the said petition, and to attend the said Court until your examination shall have been completed.

As witness my hand,

A. B.,  
*Judge of the said Court.*

**35.** In order to the commitment of any person for contempt, the warrant may be as follows :— Order for commitment for contempt.

At a Court holden on at for the trial of an Election Petition for the (*here name the Electoral Division*), before the Honourable and one of the Judges pursuant to the "Dominion Controverted Elections Act 1874." Form of, order to commit for contempt.

Whereas A. B. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof ;—The said Court does therefore sentence the said A. B. for his said contempt to be imprisoned in the Gaol for , and to pay to Our Lady the Queen a fine of \$ , and to be further imprisoned in the said gaol until the said fine be paid. And the Court further orders that the Sheriff of the said County (*or as the case may be*), and all constables and officers of the peace of any County or place where the said A. B. may be found, shall take the said A. B. into custody, and convey him to the said gaol, and there deliver him into custody of the gaoler thereof to

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undergo his said sentence. And the Court further orders the said gaoler to receive A. B. into his custody and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the                      day of                      A.D.

(To be signed by the Judge).

Parties liable to be committed for contempt.

Any petitioner, or respondent, disobeying a rule for the production of documents, may be punished as for a contempt of Court; 37 Vict. c. 10 s. 28 (1): any witness refusing to obey an order of a Judge to attend and give evidence may be in like manner punished: *Id.* s. 50.

Publication of comments in a newspaper, with a view to influence the result of an election trial, is a contempt of Court and may be punished by attachment: see *Re Lincoln Election*, 2 App. R. 353.

Warrant of commitment, how to be acted on.

**36.** Such warrant may be made out and directed to the Sheriff, or other person having the execution of process of the Superior Courts, as the case may be, and to all Constables, and Officers of the Peace, of the County or place where the person adjudged guilty of contempt may be found; and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

Interlocutory applications to be disposed of in Chambers.

**37.** All interlocutory questions and matters shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under "The Dominion Controverted Elections Act, 1874," as a Judge in Chambers in the ordinary proceedings of the Superior Courts.

Withdrawal of petition, notice of

**38.** Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent. It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

## IN THE COMMON PLEAS.

## "THE DOMINION CONTROVERTED ELECTIONS ACT, 1874. Form of.

(*Name the Electoral Division*) Petition of (*state*  
*Petitioner*) presented                      day of                      The  
 Petitioner proposes to apply to withdraw his Petition  
 upon the following ground (*here state the ground*), and  
 prays that a day may be appointed for hearing his  
 application.

Dated this                      day of                      A.D. 18   .

(*Signed.*)

As to the withdrawal of petitions: see 37 Vict. c. 10 ss. 54-55, (D).  
 No petition may be withdrawn without the leave of the Court or  
 a Judge. Notice of the application must be published: see *post*  
*Rule 40*. On such an application any person who could have been  
 a petitioner may apply to be substituted: see *Rule 41 post*; *Re*  
*Kingston Election*, 30 C. P. 389. When there are several petitioners  
 all must concur in the withdrawal. If the Court or a Judge is of  
 opinion that the withdrawal of the petition is the result of any  
 corrupt arrangement, or in consideration of the withdrawal of any  
 other petition, the Court, or Judge, is to report such opinion to the  
 Speaker, stating the reasons thereof and the circumstances attending  
 the withdrawal.

When petition  
 may be with-  
 drawn.

Notice to be  
 published.

When there  
 are several  
 petitioners all  
 must concur.  
 If withdrawal  
 result of corrupt  
 bargain Judge  
 to report.

On an application to withdraw a petition, the petitioner and re-  
 spondent must make positive affidavit that they have not been parties  
 to any corrupt arrangement, and deny to the best of their knowledge,  
 information, and belief, that any such arrangement has been made by  
 their agents. The existence of any such arrangement must also be  
 denied by the agents themselves: *Johnston v. Rankin*, 5 C. P. D. 553.

Affidavit  
 required on  
 withdrawal of  
 petition.

**39.** The notice of application for leave to withdraw  
 shall be left at the office of the Clerk of the Court.

Notice to be  
 left with Clerk  
 of Court.

**40.** A copy of such notice of the intention of the Peti-  
 tioner to apply for leave to withdraw his Petition shall  
 be given by the Petitioner to the Respondent and to  
 the Returning Officer, who shall make it public in the  
 Electoral Division to which it relates; and shall be

Notice of  
 withdrawal to  
 be served on  
 Respondent and  
 Returning  
 Officer.

Notice to be  
 published.

forthwith published by the Petitioner in at least one newspaper published or circulating in the place, if any.

The following may be a form of such notice:—

IN THE COMMON PLEAS.

“THE DOMINION CONTROVERTED ELECTIONS ACT, 1874.”

Form of notice  
of withdrawal  
to be published.

In the Election Petition for  
is Petitioner, and

in which  
Respondent.

Notice is hereby given that the above Petitioner has on the \_\_\_\_\_ day of \_\_\_\_\_ lodged at the office of the Clerk of the Court, notice of an application to withdraw the Petition, of which notice the following is a copy (*set it out*), and take notice that, by the rule made by the Judges of the said Court of Common Pleas, any person who might have been a Petitioner in respect of the said Election may, within five days after publication by the Returning Officer of this notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a Petitioner.

(Signed)

Application by  
person who  
might have been  
a petitioner, to  
be substituted  
as petitioner,  
how made.

**41.** Any person who might have been a Petitioner in respect of the Election to which the Petition relates, may, within five days after such notice is published by the Returning officer, give notice in writing signed by him, or on his behalf, to the Clerk of the Court, of his intention to apply at the hearing to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

See 37 Vic. c. 10 s. 54, (D), as to terms on which substitution may be ordered.

Substitution,  
when refused.

Where the Court in view of the evidence adduced had recommended the withdrawal of the petition, and an elector then applied to be substituted as a petitioner, but failed to adduce any additional

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grounds for invalidating the election, the application of the elector to be substituted was refused, and leave to withdraw the petition was granted : *Re Peel Election*, Hodg. 485.

ACT, 1874."

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**42.** The time and place for hearing the application shall be fixed by a Judge, and whether before the Court, or before a Judge, as he may deem advisable, but shall be not less than a week after the notice of the intention to apply has been given to the Clerk in manner as hereinbefore provided, and notice of the time and place for the hearing, shall be given to such person or persons, if any, as shall have given notice to the Clerk of the Court of an intention to apply to be substituted as Petitioners, and otherwise in such manner and at such times as the Judge directs.

Time for hearing application to withdraw, how fixed.

Notice to be given.

**43.** Notice of abatement of a Petition by death of the Petitioner, or surviving Petitioner, under section 56, of the said Act, shall be given by the party or person interested, in the same manner as notice of an application to withdraw a Petition; and the time within which application may be made to the Court or Judge by motion or summons of a Judge to be substituted as a Petitioner, shall be one calendar month, or such further time as, upon consideration of any special circumstances, the Court, or Judge, may allow.

Abatement of petition, notice of, to be given.

Proceedings upon abatement.

See *Rules 39 and 40 ante* as to mode of publication of application to withdraw a petition.

An election petition abates by the death of a sole petitioner, or of the survivor of several petitioners.

When petition abates.

The abatement of the petition does not affect the liability of a petitioner for costs previously incurred. On the abatement taking place, notice thereof is to be given in the Electoral District to which the petition relates, and within the time prescribed by this *Rule* any person who might have been a petitioner in respect of the election may apply to be substituted as petitioner. Such applicant must give security as upon the filing of a new petition: see 38 Vict. c. 10, s. 56, (D.)

Effect of abatement.

Death of Respondent, or elevation to Senate, or declaration by House that his seat is vacant—effect of; proceedings to be had thereon.

**44.** If the Respondent dies, or is summoned to Parliament as a Member of the Senate, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a Petitioner, under the Act in respect of the Election to which the Petition relates, may give notice of the fact in the Electoral Division, by causing such notice to be published in at least one newspaper published or circulating therein, if any, and by leaving a copy of such notice signed by him, or on his behalf, with the Returning Officer, and a like copy with the Clerk of the Court.

See 38 Vict. c. 10, s. 57 (D.); and see *Rule 47 post*.

Notice by Respondent that he does not intend to oppose petition, how given.

**45.** The manner and time of the Respondent giving notice to the Court that he does not intend to oppose the Petition, shall be by leaving notice thereof in writing at the office of the Clerk of the Court, signed by the Respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice.

See 38 Vict. c. 10, s. 58 (D).

Copy of notice to be sent to Petitioner and Sheriff, by Clerk of Court; and Sheriff to publish same.

**46.** Upon such notice being left at the office of the Clerk of the Court he shall forthwith send a copy thereof by the post to the Petitioner or his Agent, and to the Sheriff who shall cause the same to be published in the Electoral Division.

Time for applying to be admitted as respondent.

**47.** The time for applying to be admitted as a Respondent in either of the events mentioned in the 57th section of the Act, shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or a Judge may allow.

Costs, how to be taxed.

**48.** Costs shall be taxed by the Clerk of the Court, or, at his request, by any Master of a Superior Court, upon the rule of Court, or Judge's order, by which the costs are payable, and costs when taxed may be re-

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covered by execution issued upon the rule of Court, ordering them to be paid, or, if payable by order of a Judge, then, by execution upon such order, or in case there be money in Court available for the purpose, then to the extent of such money by order of the Court or a Judge. The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these Rules shall be the same as those payable, if any, for like proceedings according to the present practice of this Court.

May be recovered  
by execution.

Office fees to be  
same as for  
other pro-  
ceedings.

For tariff of fees, see *ante* p. 553.

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tice.

**49.** An Agent employed for the Petitioner or the Respondent shall forthwith leave written notice at the office of the Clerk of the Court, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

Agent employed  
by Petitioner or  
Respondent, to  
give notice to  
Clerk of Court.  
Service on him  
sufficient.

It seems an omission, not to have required this notice to be also served on the opposite party.

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**50.** At the time appointed for the trial of any Election Petition, the Petitioner shall leave with the Registrar, for the use of the Judge, at the trial, fairly written on one side of the paper only—a copy of the petition and of all the proceedings thereon, which show the several matters to be tried, including the particulars of objection on either side, the correctness of which copy, in so far as the proceedings are filed with the Clerk of the Court, shall be certified by the said Clerk. The Judge may allow amendment of the said copy, or in default of of such copy being delivered, the Judge may refuse to try the Petition, or may allow a further time for delivery of the copy, or may adjourn the trial, in every case upon such terms, as to costs and otherwise, as the Judge shall see fit to impose.

Copy of petition  
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Judge after trial  
to return to  
Clerk of Court  
evidence, &c.

**51.** After the trial of any Election Petition the Judge shall return to the Clerk of the Court the evidence and proceedings before the said Judge and his finding on the said Petition.

As to the report to be made by the Judge to the Speaker : see 33 Vict. c. 10, ss. 29-31 (D.)

Proceedings not  
to be defeated  
by formal  
objections.

**52.** No proceedings under "The Dominion Controverted Elections Act, 1874," shall be defeated by any formal objection.

Rules of Court,  
how to be  
published.

**53.** Any Rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up in the Office of the Clerk of the Court.

English practice,  
how far in force.

So far as the Rules of Court do not otherwise provide the principles, practice, and Rules in force as to Election Petitions in England on the 26th May, 1874, are to be observed : see 37 Vict. c. 10, s. 45 (D.)

Commission to  
examine witness  
may be issued.

Under this section it was held that a commission might issue to examine a witness resident abroad : see *Re Cornwall Election Petition*, 8 P. R. 64.

#### RULE OF QUEEN'S BENCH AND COMMON PLEAS OF 13th DECEMBER, 1878.

As of Michaelmas Term, 42 Victoria,

Practice laid  
down by  
Dominion Acts  
adopted.

**54.** It is ordered by the Judges of the Courts of Queen's Bench and Common Pleas, by virtue of the Statutory powers and authority which they possess and exercise, and by virtue of the other powers and authority which the said Courts jointly or severally possess and exercise, to make rules and orders for the effectual execution of the "Dominion Controverted Elections Act, 1874," and of any other Act of the Dominion Parliament, connected with or relating to Controverted Elections or to corrupt or other illegal practices at said Elections, or at any prior Election, or to inquiries which may be made into, or in any way

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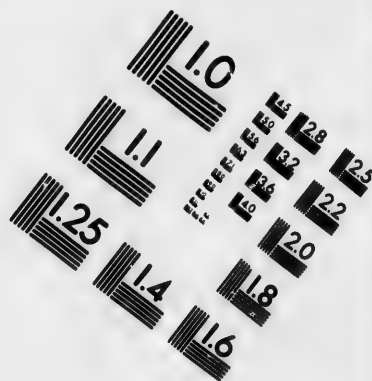
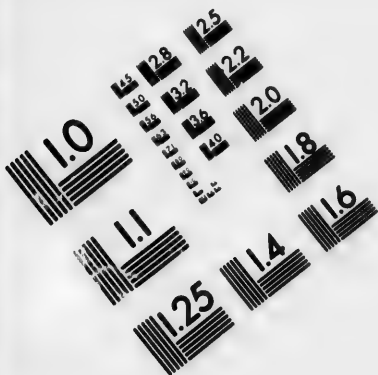
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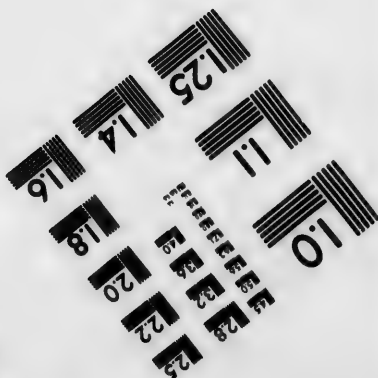
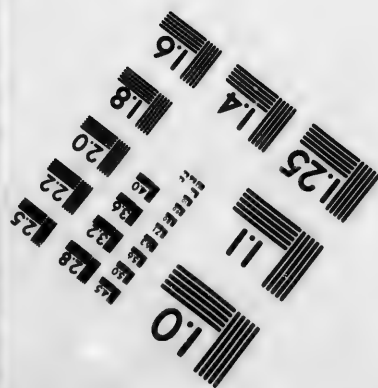
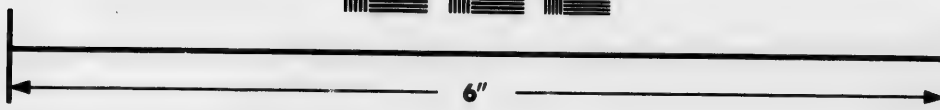
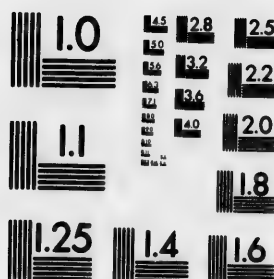
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## ELECTIONS TO LEGISLATIVE ASSEMBLY OF ONTARIO.

RULES OF ELECTION COURT OF 11 MARCH, 1871.

Certain Rules were passed this day by the Chief Justice of the Queen's Bench, the Chancellor of Ontario, and the Chief Justice of the Common Pleas, regulating proceedings for the trial of Controverted Elections to the Provincial Legislature. These Rules are now superseded by the following *Rules* made by the Court of Appeal :

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## IN THE COURT OF APPEAL FOR ONTARIO.

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### GENERAL RULES.

FOR THE TRIAL OF

## CONTROVERTED ELECTIONS

OF MEMBERS OF THE

LEGISLATIVE ASSEMBLY OF ONTARIO.

PURSUANT TO

The Controverted Elections Act of Ontario, (*R. S. O. ch. 11*),  
29th June, 1883.

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Election petition,  
how presented.

**1.** The Presentation of an Election Petition shall be made by leaving it at the office of the Registrar of the Court of Appeal, who, or his clerk, shall (if required) give a receipt which may be in the following form:—

Received on the                      day                      at the office  
of the Registrar of the Court of Appeal, a petition

touching the Election of *A. B.*, a member for purporting to be signed by (*insert the name of Petitioners*).

*C. D.*, Registrar.

With the Petition shall also be left a copy thereof for the said Registrar to send to the Returning Officer, pursuant to section 12 of the Act.

*R. S. O. c. 11, s. 12* referred to in this *Rule* is as follows:—

"12. On the presentation of the petition, the Registrar of the Court shall send a copy thereof by mail to the Returning Officer of the Electoral District to which the petition relates, who shall forthwith publish the same in the District."

Registrar to forward copy to Returning Officer.

The necessary postage for forwarding the petition to the Returning officer should also be left with the Registrar.

The petition must be filed in the office of the Registrar of the Court of Appeal; if filed in a wrong office, the defect cannot be cured after the time for filing a petition has elapsed: *In re Prescott Election*, (*Dom.*) 9 P. R. 481.

Filing in wrong office—effect of.

**Time for filing petition:—** The petition must be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery of the member to whose election the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other act of bribery to have been committed by the member, or on his account, or with his privity, since the time of such return in pursuance, or furtherance, of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment, or the acts complained of: *R. S. O. c. 11, s. 9*.

Time for filing petition.

When a petition is presented against the return of any member, the respondent, or any other person authorized by law to present an election petition, may, within fifteen days after service of the petition against the return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election who was not returned, whether the seat is, or is not, claimed by him, or on his behalf, and the trial of such petition is to take place at the same time as the trial of the petition against such member or respondent, or at such other time as may be appointed, *Ib. s. 7*.

Sundays, and any day set apart by any Act of the Legislature of Ontario for a public holiday, fast, or thanksgiving, are to be excluded in computing the time for filing petitions: *Ib. s. 106*; see *West Toronto Election Petition*, 5 P. R. 364.

The presentation of the petition is made by delivering it to the Registrar of the Court of Appeal, or his Clerk : *R. S. O. c. 11. s. 10.*

**Affidavit of petitioner.**

**Affidavit of petitioner.**—With every election petition there is to be filed an affidavit by the petitioner or petitioners, referring to, or annexed to, the petition, and stating that the deponents present the petition in good faith, and have reason to believe, and do believe the statements contained in the petition to be true in substance and in fact : *Ib. s. 11.*

**Security for costs to be given by petitioner.**

**Security for costs.**—At the time of presenting the petition, or within three days afterwards, security shall be given on behalf of the petitioner for the payment of all costs, charges, and expenses that may become payable by the petitioner :—

- (a) To any person summoned as a witness on his behalf ; or—
- (b) To the member whose election or return is complained of.

**Nature of security required.**

The security is to be by the deposit of \$1,000 in one of the banks in which the money of the Provincial Government is then being deposited, to the credit of the election petition, with the privity of the Registrar of the Court, which deposit is to be subject to such general, or other rules, and regulations, as the Court may from time to time make, and is not to be withdrawn without the order of the Court, or of a Judge having jurisdiction in the premises : see *R. S. O. c. 11, ss. 13, 14.*

**Whether Returning Officer entitled to benefit of security—Query.**

It appears doubtful whether a Returning Officer made a respondent could claim the benefit of the deposit as security for costs ; cf. *R. S. O. c. 11, s. 13, and 37 Vict. c. 10 s. 8 sub-s. 4 (D.)*

A receipt for the money deposited is to be filed with the Registrar : see *Rule 19 post.*

**Name of petitioner's solicitor.**

**Name of Solicitor.**—With the petition, a notice is also to be left, giving the name of a practising solicitor, if the party acts by solicitor ; and if not, then stating that the petitioner acts in person, and in either case giving an address within the city of Toronto, at which notices addressed to him may be left : see *post Rule 9.* Only persons entitled to practise as solicitors of the Supreme Court are competent to act as agents in election petitions ; see *R. S. O. c. 11 s. 107.*

**Election Petition, contents of.**

**2. An Election Petition shall contain the following statements :—**

1. It shall state the right of Petitioner to petition within section 3 of the Act.
2. It shall state the holding and result of the Election, and shall briefly state the facts and grounds relied on to sustain the prayer.

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S. O. c. 11. s. 10.  
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**Petitioners.**—The persons entitled to file an Election Petition under R. S. O. c. 11, s. 3, are:—

- (a) Some person who voted, or who had a right to vote, at the Election to which the petition relates.
- (b) Some person claiming to have had a right to be returned, or elected, at such Election; or—
- (c) Some person alleging himself to have been a candidate at such Election.

As to who may not be voters: see R. S. O. c. 10, ss. 4, 5, 6; and as to who may be voters: see *Ib.* s. 7.

As to candidates: see R. S. O. c. 10, s. 3, *Ib.* c. 12, ss. 5-9; *Ib.* c. 11, s. 2, s.s. 5.

The last sub-sec. has been repealed by 47 Vict. c. 4, sec. 44, schedule 4.

For form of petition: see *post* Rule 5.

A petitioner who is found to have been guilty of corrupt practices at the Election complained of, or who has been found guilty of corrupt practices at a former Election, is not disqualified from being a petitioner, unless actually disfranchised by the judgment of the Court: *Re Dufferin Election (Ont.)*, *Sleightholm v. Barr*, Hodg. 529; 4 App. R. 420; *Re North Simcoe Election (Dom.) Edwards v. Cook*, Hodg. 617; 10 C. L. J. 217; *Re Cornwall Election (Dom.) Maclellan v. Bergin*, Hodg. 803, and see *Re North Oxford Election (Dom.)*, 8 P. R. 526; *Prince Edward Election (Ont.)*, *Anderson v. Striker*, Hodg. 45.

The status of a petitioner cannot be inquired into on a preliminary objection: *Re Dufferin Election (Ont.)*, *Sleightholm v. Barr*, *supra*.

The qualification of a petitioner who claims to be a voter may be enquired into at the trial, when the respondent claims by his answer that he is disqualified: *Re Prescott Election (Ont.)*, *McKenzie v. Hamilton*, Hodg. 1.

A petition complaining of no return, may be presented: R. S. O. c. 11, s. 6.

**Respondents.**—Two or more candidates may be made respondents to the same petition, and their case may, for the sake of convenience, be tried at the same time; but the petition, for the purposes of the Act, is to be deemed a separate petition against each respondent: see R. S. O. c. 11, s. 4.

Where the conduct of the Returning Officer is complained of, such Returning Officer shall, for all the purposes of the Act except the admission of respondents in his place, be deemed to be a respondent: *Ib.* s. 5.

**3.** The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph

Petitioners,—  
who may be.

Person found  
guilty of corrupt  
practices, when  
not debarred  
from petitioning.

Qualification of  
of petitioner, how  
determined.

Petition com-  
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Respondents.

Returning Officer  
may be made a  
respondent.

Petition to be di-  
vided into para-  
graphs, and num-  
bered, &c.



shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered, by the Court or Judge.

Allegations in petition, how to be framed.

It is not intended that the petition should set out in detail every specific item intended to be relied on; at the same time there must be stated in the petition some general ground of objection under which the several acts or objections intended to be relied on, may be proved; the details, if required, are to be set forth in the particulars which may be ordered to be delivered under *Rule 6 post*; *Lincoln Election, (Ont.) Paewling v. Rykert, Hodg. 489.*

Evidence not to be stated.

Evidence need not be stated in the petition: see *post Rule 6*, but that *Rule* does not absolutely preclude the statement of evidence in the petition: *South Oxford Election, (Ont.) Hopkins v. Oliver, Hodg. 238; 11 C. L. J. 161.*

Amendment of petition, when allowed.

The Judge trying a petition has power to allow an amendment of the petition, by inserting an objection to a voters' list used at the election: *Monck Election, (Ont.) Colliar v. McCallum, Hodg. 154*, but it was held *Re West Simcoe Election, (Ont.) (August, 1883)*, that there is no power to allow any substantial charge, to be added by amendment after the time for filing an original petition has elapsed.

Petition to conclude with prayer

**4.** The Petition shall conclude with a Prayer, as for instance, that some specified person should be declared duly returned or elected, or that the Election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the Petitioners.

Petition must be signed.

The Statute also requires the petition to be signed by the petitioner or petitioners: see *R. S. O. c. 11, s. 8.*

Dispute as to signature, how determined.

The objection that the petition has not been signed by the petitioner, and that his name has been used *malâ fide*, is a matter of fact which cannot be summarily disposed of on a preliminary objection: *Re North Simcoe Election, Hodg. 617; 10 C. L. J. 232.*

Petition, form of.

**5.** The following form, or one to the like effect, shall be sufficient:—

#### IN THE COURT OF APPEAL.

The "Controverted Elections Act" Election for (state the place) holden on the                      day of                      A.D.

costs shall be  
tion not sub-  
ales otherwise

The petition of *A.* of \_\_\_\_\_ (or of *A.* of \_\_\_\_\_  
and of *B.* of \_\_\_\_\_, as the case may be), whose names  
are subscribed.

t in detail every  
time there must  
objection under  
relied on, may be  
in the particulars  
6 post; *Lincoln*

1. Your Petitioner *A.* is a person (or, if more than  
one, say Your Petitioners are persons) who voted (or  
had a right to vote, as the case may be) at the above  
Election (or claims to have had a right to be returned  
at the above Election, or was a candidate at the above  
Election.)

e post Rule 6, but  
ent of evidence in  
v. *Oliver*, Hodg.

2. And your Petitioners state that the Election was  
holden on the \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
when *A. B.*, *C. D.*, and *E. F.*, were candidates, and the  
Returning Officer has returned *A. B.* as being duly  
elected.

an amendment of  
s' list used at the  
llum, Hodg. 154,  
t, 1883), that there  
added by amend-  
as elapsed.

3. And your petitioners say that (*here state the facts  
and grounds on which the Petitioners rely.*)

a Prayer, as  
on should be  
t the Election  
turn may be  
be signed by

Wherefore your Petitioners pray that it may be  
determined that the said *A. B.* was not duly elected or  
returned, and that the Election was void (or that the  
said *E. F.* was duly elected and ought to have been  
returned, or as the case may be).

(Signed) *A*  
*B*

by the petitioner

It is only necessary to set forth the facts and grounds relied on, it  
is not necessary to state the evidence by which those facts are inten-  
ded to be proved; see *infra* Rule 6. For example, it would be  
sufficient to allege that "50 illegal votes, and 49 improperly marked  
ballots were received in favour of the said *A. B.*, (*the successful candi-  
date*); that 100 good votes, and 150 properly marked ballots tendered  
in favour of the said *E. F.*, (*the unsuccessful candidate*) were improperly  
refused; and that the said *A. B.* (*the successful candidate*) and his  
agents were guilty of corrupt practices in this, that the said *A. B.*  
bribed *M., N., O., & P.*, and *X.* the agent of the said *A. B.* also bribed  
*Q., R., S.*, and *T.*, in order to induce the said *M., N., O., P., Q., R.,*  
*S.*, and *T.* to vote at the said election in favour of the said *A. B.*"

by the petitioner,  
tter of fact which  
y objection: *Re*

ce effect, shall

When evidence or scandalous, or impetinent matter, is stated, the  
matter so introduced may, on application, be struck out: see *South  
Oxford Election*, (Ont.) *Hopkins v. Oliver*, Hodg. 238; 11 C. L. J.  
161; *Re Algoma Election*, 20 C. L. J. 261; and the costs of such  
superfluous or improper, matter, would probably be disallowed in  
any event.

Evidence stated,  
may be struck  
out.

tion for (state

A.D.

Additional charges, when not allowed to be added.

After the time for filing an original petition has elapsed, no substantial charge can be added to the petition by amendment: *Re West Simcoe Election*, (August, 1883); and see *ante* Rule 3.

It is not necessary for a petition to show the time at which the return of the respondent was published in the *Gazette*: *In re Russell Election (Dom.)*, *Henderson v. Dickenson*, 1 O. R. 439.

Service of petition—time for.

**Service of petition.**—Notice of the presentation of a petition accompanied with a copy of the petition, must, within five days after the day on which the security for costs is given, or within such longer time as the Court may, under special circumstances of difficulty in effecting service, allow, be served by the petitioner on the respondents, as nearly as may be in the manner in which a writ of summons is served, or in such other manner as may be prescribed by *Rules of Court*: see *R. S. O. c. 11, s. 15*; *Ib. s. 2, sub-sec. 8*; *Ib. s. 106*; *Rule 14 post*.

Service on solicitor or agent.

When the respondent has named a solicitor or agent or given an address for service, under *Rule 10 post*, the petition may be served by delivering it to such agent or mailing it to the address for service, given by the respondent: see *Rule 14 post*.

Preliminary objections, how taken.

**Preliminary objections.**—The statute *R.S.O. c. 11* contains no provision similar to that in *The Dominion Controverted Elections Act*, 1874, limiting the time within which preliminary objections to an Election petition are to be taken: objections in the nature of preliminary objections may be taken however by motion, and the special circumstances of each case must determine, whether the preliminary objections have been taken with sufficient promptitude: *Re Dufferin Election (Ont.)*, *Steightholm v. Barr*, *Hodg. 529*; 4 A. R. 420.

Under the Dominion Act, objections delivered after the time limited, are not void, but only irregular, and while they remain on the files of the Court, the petition is not at issue, and there can be no examination of the parties: *Re Bothwell Election, (Dom.)* 9 P. R. 485

See further as to preliminary objections p. 668 *ante*.

No answer to petition required.

**Answer.**—No formal answer need be filed to a petition, and the petition, in practice, is deemed to be at issue as soon as it is served.

Evidence not to be stated in petition, but particulars may be ordered to be delivered.

**6. Evidence is not to be stated in the Petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial, in the same way as in ordinary proceedings in the High**

lapsed, no sub-  
mittal: *Re West*

Court of Justice, and upon such terms as to costs and otherwise as may be ordered.

at which the  
te: *In re Russell*  
9.

Where evidence is stated in a petition, it may, on motion, be struck out: see *South Oxford Election*, (Ont.), *Hopkins v. Oliver*, Hodg. 238; 11 C. L. J. 161.

Evidence stated  
in petition may  
be struck out.

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*Ib.* s. 106; *Rule*

Where particulars are ordered to be delivered, they must be verified by the oath of the petitioner, or one of them, that he has reason to believe and does believe the statements contained in such particulars to be true in substance and in fact: see *R. S. O.* c. 11, s. 11. Where however the parties go into evidence without particulars, or upon charges not specified in the particulars delivered, the petitioners affidavit of verification is not necessary: *Lincoln Election*, *Pauling v. Rykert*, Hodg. 489.

Particulars to be  
verified by oath.

agent or given an  
on may be served  
address for service,

Particulars will not be ordered respecting matters charged, which are not within the actual knowledge of the petitioner, *e. g.*, where it was charged that improperly marked ballots were received, and properly marked ballots were rejected, an order to deliver particulars of such cases was refused. But particulars will be ordered of the names, address, abode, and addition of persons having good votes, whose votes are alleged to have been improperly rejected at the polls; so also particulars will be ordered of corrupt practices charged by a petitioner against the respondent and his agents: *Beal v. Smith*, 4 L. R. C. P. 145; *West Elgin Election*, (Ont.) Hodg. 223; 11 C. L. J. 160.

Particulars of  
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de: *Re Dufferin*  
A. R. 420.

The time fixed for delivery of the particulars is in the discretion of a Judge. For form of order: see *Dickson v. Murray*, 19 C. L. J. 211. In that case the particulars were ordered to be delivered eight clear days before the trial. Where particulars were delivered after the time limited by the order, and were not returned, an application at the trial to set them aside was refused; such an application should be made in Chambers before the trial: *North Victoria Election*, (Ont.) *McRae v. Smith*, Hodg. 252.

Time for delivery  
of particulars.

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remain on the  
there can be no  
(m.) 9 P. R. 485

Particulars of recriminatory charges delivered after the time limited were allowed, but on the terms of giving the petitioner further time to answer the charges therein contained, and giving him the costs occasioned by the granting of the application: *Ib.*

petition, and the  
as it is served.

Where the particulars are not properly prepared, the party delivering them, though successful, may be disallowed the costs of such particulars: *East Northumberland Election* (Dom.), *Gibson v. Biggar*, Hodg. 577.

Petition, but  
particulars as  
unnecessary  
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n the High

The particulars may be amended by the Judge at the trial, on the terms of giving time to the party affected by the amendment, to make inquiries: *Stormont Election* (Ont.), *Bethune v. Colquhoun*, Hodg. 21;

Amendment of  
particulars.

7 C. L. J. 213 : *Welland Election (Ont.) Beatty v. Currie*, Hodg. 47. But such amendment may be refused when it is not shown that the petitioner, or persons employed by him, could not have given the information earlier, and the charges sought to be added are not verified by the petitioner's affidavit : see *South Norfolk Election (Dom.)*, *Decow v. Wallace*, Hodg. 660.

Better particulars when order for refused.

Better particulars will not be ordered, even where the order is not complied with in furnishing certain details, provided the Judge to whom the application is made should think these details unnecessary or unreasonable, nor unless the respondent can shew on affidavit that the want of such information will prejudice him in his defence : *Re West Toronto Election, Armstrong v. Crooks*, 5 P. R. 436.

For forms of particulars : see *Cunningham's Law of Elections*, (2nd Ed.) pp. 605-6. See further as to particulars, pp. 670-1. *ante*.

Petitioner claiming seat for unsuccessful candidate, to deliver list of votes intended to be objected to, &c.

7. When a Petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, or defending the Election or return, shall, six days before the day appointed for trial, deliver to the Registrar and also at the address, if any, given by the Petitioners and Respondent (as the case may be), a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Registrar shall allow inspection and office copies of such lists to all parties concerned ; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court or Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

The Registrar referred to in this Rule is the Registrar of the Court of Appeal.

No order for delivery of list is necessary.

No order is necessary for the delivery of the list of votes objected to as required by this Rule : *Re West Elgin Election*, Hodg. 223.

This Rule is similar in effect to *Election Rule*, Q. B. 7. In the Common Pleas the time for delivering the list of votes is fourteen days before the trial : see *Election Rule* C. P. 7.

For form of list of votes : see *Cunningham's Law of Elections*. (2nd ed.) 607.

**8.** When the Respondent in a Petition under the Act, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the Election of such person was undue, pursuant to the 50th section of the Act, such Respondent shall, six days before the day appointed for trial deliver to the Registrar, and also at the address, if any, given by the Petitioner, a list of the objections to the Election upon which he intends to rely. And the Registrar shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a Respondent of any objection to the Election not specified in the list, except by leave of the Court or Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered.

Respondent claiming that election of person for whom seat is claimed, is undue, is to deliver list of votes objected to, &c.

*R. S. O. c. 11, s. 50*, is as follows: "On the trial of a Petition under the Act, complaining of an undue return, and claiming the seat for some person, the Respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such Election."

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

No order is necessary for the delivery of the list of objections referred to in this *Rule*: see *Re West Elgin Election*, Hodg. 223.

No order for delivery of list is necessary.

This *Rule* is similar in times to *Election Rule*, Q. B. 8. In the Common Pleas the list is to be delivered fourteen days before the trial: see *Election Rule* C. P. 8.

For form of list of votes, see *Cunningham's Law of Elections*, (2nd ed.) 607.

**9.** With the Petition, Petitioners shall leave at the office of the Registrar a writing, signed by them or on their behalf, giving the name of some person entitled to practise as a Solicitor or whom they authorize to act as their Agent, or stating that they act for themselves (as the case may be), and in either case giving an address, within the City of Toronto, at which notices addressed to them may be left; and if no such writing

Petitioner to deliver with petition a notice stating name of his solicitor, if any, or if he intends to act in person, and giving, in either case, an address for service.

Effect of non-compliance with rule.

be left or address given, then all notices and proceedings may be given by sticking up the same at the office of the said Registrar.

Notice to be in duplicate.

The notice referred to in this *Rule* ought to be delivered in duplicate, one copy to be filed with the Registrar of the Court of Appeal and the other to be forwarded by him to the Returning Officer as required by *Rule 12 post*.

Subsequent appointment of solicitor to be notified.

When the petitioner files the petition in person, but subsequently employs a solicitor to act for him, written notice of the appointment is to be left at the office of the Registrar : see *post Rule 48*.

The agent appointed under this *Rule* must be a person entitled to practise as a solicitor of the Supreme Court of Ontario ; see *R. S. O. c. 11, s. 107*.

Respondent may, before petition filed, give notice of appointment of solicitor, or that he intends to act in person, and give address for service.

**10.** Any person returned as a member may, at any time after he is returned, send or leave at the office of the Registrar a writing, signed by him or on his behalf, appointing a person entitled to practise as a Solicitor to act as his Agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within the City of Toronto, at which notices may be left, and in default of such writing being left within a week after service of the petition, notices, and proceedings may be given and served respectively by sticking up the same at the office of the said Registrar.

Petition may be served on solicitor so appointed, or at address given.

When a notice pursuant to this *Rule* has been left with the Registrar of the Court of Appeal before service of the petition, the petition may be served upon the agent, (if any), named in the notice, or by posting it in a registered letter to the address given for service at such time, that in the ordinary course of post it will be delivered within the prescribed time : see *Rules 13, 14 post*.

The agent to be appointed under this *Rule* must be a person entitled to practise as a solicitor of the Supreme Court of Ontario ; see *R. S. O. c. 11, s. 107*.

Where the notice has been left with the Registrar before the petition is filed, a copy of it is to be sent to the Returning Officer : see *post Rule 12*.

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**11.** The Registrar shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours, without payment of any fee.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

Registrar of  
Court of Appeal  
to keep book for  
addresses and  
names of Agents.

**12.** The Registrar shall, upon the presentation of the Petition, forthwith send a copy of the Petition to the Returning Officer pursuant to section 12 of the Act, and shall therewith send the name of the Petitioner's Agent, if any, and of the address, if any, given as prescribed, and also of the name of the Respondent's Agent and the address, if any, given as prescribed, and the Returning Officer shall forthwith publish those particulars along with the Petition.

The cost of publication of this, and any other matter required to be published by the Returning Officer, shall be paid by the Petitioner or person moving in the matter, and shall form part of the general costs of the Petition.

Registrar to for-  
ward copy of pe-  
tition, and of ad-  
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of petitioner, and  
respondent, to  
Returning Officer  
to be published  
by him.

Costs of publica-  
tion to be borne  
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matter.

R. S. O. c. 11. s. 12 is as follows: "12. On presentation of the petition the Registrar of the Court shall send a copy thereof by mail to the Returning Officer of the Electoral District to which the petition relates, who shall forthwith publish the same in the District."

**13.** The time for giving notice of the presentation of a Petition shall be five days, exclusive of the day of presentation.

This *Rule* appears to conflict with the Statute R.S.O. c. 11, s. 15. It appears to contemplate that the petition shall be served within five days after its presentation; whereas, under the statute, it would be served in time, if served within five days after the security is given; and by section 13, the security need not be given until three days after the presentation of the petition, so that if the full time for giving the security were taken, the time for service of the petition would be eight days, instead of five, after the presentation of the petition.

The statute would appear to override the *Rule*: see R. S. O. c. 11, s. 103, s.s. 2.

Time for giving  
notice of presen-  
tation of petition.



Petition may be served on Respondent's agent, if any, or by posting to address for service, if any given.

**14.** Where the Respondent has named an agent or given an address, the service of an Election Petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such a time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases to be personal, unless otherwise ordered.

In other cases the service must be personal on the Respondent, unless a Judge on an application made to him not later than five days after the Petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service, and cause the matter to come to the knowledge of the Respondent, including, when practicable, service upon an agent for Election expenses, in which case the Judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

See *ante* Rules 5 and 13 and notes.

When personal service cannot be effected, agent for payment of election expenses to be served.

This *Rule* contemplates that before personal service shall be dispensed with, the petition shall be served, when practicable, within five days after its presentation, on the respondent's agent for election expenses appointed under the provisions of *R. S. O. c. 10, s. 183*.

Evasion of service.

**15.** In case of evasion of service, the sticking up in the office of the Registrar a notice of the Petition having been presented, stating the Petitioner, and the prayer shall be deemed equivalent to personal service, if so ordered by a Judge.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

Payment out of money deposited as security—how made.

**16.** Money deposited under the 13th section of the Act shall, if, and when the same is no longer needed for securing payment of costs, charges, and expenses, payable by the Petitioner pursuant to the Act, be returned or otherwise disposed of as justice may require, by an order of the Court of Appeal or of a Judge.

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The money referred to in this *Rule* is the \$1,000 to be deposited as security for costs: see *ante Rule 1* note.

**17.** Such order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Court or Judge may require.

Order for pay-  
ment out, how  
made.

**18.** The order may direct payment either to the party in whose name the same deposited, or to any person entitled to receive the same.

As to the right of a Returning Officer who is made a respondent to indemnity out of the deposit: see *Rule 1 ante*, and note.

**19.** A receipt for the money so deposited shall be handed to the Registrar, who shall file the same and keep a book open to inspection of all parties concerned, in which shall be entered, from time to time, the amount and the Petition to which it is applicable, which book may be inspected without payment of any fee.

Receipt for mon-  
ey deposited, to be  
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The Statute *R. S. O. c. 11, s. 14, s.s. 2*, requires that the deposit should be made to the credit of the Election petition, with the privity of the Registrar of the Court of Appeal. The words "with the privity of the Registrar" mean that the deposit must be so made, as not to be capable of being withdrawn, except upon the cheque of the Registrar, countersigned by a Judge: see *Rule 47 post*.

Deposit how  
made.

**20.** The Registrar shall make out the Election list. In it he shall insert the names of the Agents of the Petitioners and Respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the office of the Registrar at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Controverted Elections Act."

List of petitions  
to be posted up  
in Registrar's  
office.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

Time and place  
of trial to be  
fixed by Judges.

Notice of trial,  
how to be given.

Sheriff to publish  
same.

Time of trial.

Trial not to take  
place during sittings  
of Legislature,  
or within 15  
days after, with-  
out consent.

Notice of trial  
how given.

Place of trial.

**21.** The time and place of the trial of each Election Petition shall be fixed by the Judges on the rota, and notice thereof shall be given in writing by the Registrar, by sticking notice up in his office, sending one copy by post to the address given by the Petitioner, another to the address given by the Respondent, if any, and a copy by the post to the Sheriff fifteen days before the day appointed for the trial. The Sheriff shall forthwith publish the same in the Electoral Division.

A copy of the notice of trial is also to be transmitted by the Registrar to the Clerk of the Crown in Chancery in addition to the persons mentioned in this *Rule*: see *Rule 24, infra*.

**Time of Trial.**—The trial of an election petition is to be commenced within six months from the time when the petition was presented, and is to be proceeded with *de die in diem*; but it may be adjourned, or postponed, when the requirements of justice render it necessary: see *R. S. O. c. 11, ss. 44-47*; *Rule 26 post*. But this rule as to the commencement of the trial is subject to this exception that a trial cannot proceed against a sitting member, without his consent, during the session of the Legislative Assembly, nor within fifteen days after the close of the session; and in the computation of any delay allowed for any step or proceeding in respect of the trial, or for the commencement of the trial under s. 47, the time occupied by the session is not to be reckoned: see *Ib. s. 48*.

Where three months, exclusive of any time occupied by any session of the Legislative Assembly, have elapsed from the filing of a petition without the day of trial being fixed, any elector may, on application, be substituted for the petitioner on such terms as may seem just: see *Ib. s. 46*.

By the Statute *R. S. O. c. 11, s. 41*, notice of the time, and place, of trial, is to be given in the manner prescribed by the *Rules*, not less than fourteen days before the day on which the trial is to take place. It will be observed that this *Rule* requires that the notice shall be given fifteen days before the day of trial.

The day appointed, may, by consent of the parties, and by order of a Judge, be altered to an earlier day: *Re West Elgin Election, Cascaden v. Monroe, (Ont.) Hodg. 227*.

**Place of trial.**—The trial is to take place in the Electoral District, the election or return for which is in question, unless it appears to the Court that special circumstances exist which render it desirable that the petition should be tried elsewhere, in which case the Court

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ase the Court

may appoint such other place for the trial as appears most convenient: see *R. S. O. c. 11, s. 40*. After the trial has commenced, it may be adjourned to any other place within the District: see *Ib. s. 44*. When either party desire the trial to take place elsewhere than in the Electoral District, a special application supported by affidavits of the facts constituting the special circumstances relied on, must be made, such application should be made to the Court, and not to a Judge in Chambers: *Collins v. Price*, 5 C. P. D. 544. Where a rule has been taken out appointing the trial to take place at a place not within the Electoral District, it was held that the Judge at the trial had no power to adjourn the trial to a place within the Electoral District: *Re South Grey Election, Hunter v. Lauder (Ont.)*, Hodg. 52.

**Election Petition, how tried:**—Where corrupt practices are alleged against a candidate, or his agents, the petition must be tried by two of the Judges on the *rota* of Election Judges: *R. S. O. c. 11, s. 38*. In other cases, except where the petition raises a question of law for the determination of the Court, as in the Act mentioned, the petition is to be tried by one of the Judges on the *rota*, sitting in open Court without a jury: *Ib. s. 39*.

Neither the Act nor Rules state specifically how a petition which raises a question of law is to be tried. It seems clear, however, that it is not every petition which raises a question of law which is excluded from trial by a single Judge, but simply cases where the question of law is stated as a special case under *R. S. O. c. 11, s. 62*. It is presumed that in such cases the intention of the Act is, that questions of law so raised should be disposed of by at least two of the Election Judges.

Questions of law arising at a trial may be reserved by a Judge under s. 56, which shows that a petition is not excluded from trial by a single Judge merely because a question of law arises upon it. It is not compelled to reserve the question, but may himself determine it, if he think fit: *North York Election (Ont.) Gorham v. Boulton*, Hodg. 62.

**Witnesses.**—The attendance of witnesses may be obtained by service of *subpœna*: see *R. S. O. c. 11, s. 51*; or the Judge or Judges at the trial, may order the attendance of any person as a witness: *Ib. s. 52*. The *subpœna* is issued on *prœcipe* by the Registrar of the Court of Appeal.

The *subpœna* must be served personally: this is done by leaving with the witness a true copy of the original writ, omitting, however, any other name besides his own that may be in the original; and, whenever it is intended to proceed by attachment in case of disobedience, the original should be shown to the witness whether he desire to see it or not: *Re v. Sloman*, 1 D. P. C. 618: production of the original is not otherwise necessary, unless demanded by the witness: *Mullett v. Hunt*, 1 C. & M. 752.

Election petition,  
how tried: where  
corrupt practices  
alleged—two  
Judges.

Questions of law  
may be reserved.

Witnesses at-  
tendance of, how-  
procured.

Posting up notice  
of trial in Regis-  
trar's office suffi-  
cient.

**22.** The sticking up of the notice of trial at the office of the Registrar shall be deemed and taken to be notice in the prescribed manner, within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

The notice referred to in this *Rule* must be stuck up in the office of the Registrar of the Court of Appeal, not less than fourteen days before the day on which the trial is to take place: *R. S. O. c. 11, s. 41*, and by the preceding *Rule* 21, the notice is required to be put up fifteen days before the day of trial.

Notice of trial,—  
form of.

**23.** The notice of trial may be in the following form:—

“CONTROVERTED ELECTIONS ACT.”

Election Petition of (*name the Electoral Division*),  
Take notice that the above Petition (*or Petitions*), will  
be tried at            on the            day of            , and on  
such other subsequent days as may be needful.

Dated the            day of

By order

(Signed)            A. B.

Registrar of the Court of Appeal.

Notice of trial to  
be sent to Clerk  
of Crown in  
Chancery who is  
to deliver poll  
books to Judge's  
Registrar.

**24.** The notice of the time and place of the trial of each Election Petition shall be transmitted by the Registrar to the Clerk of the Crown in Chancery, and the Clerk of the Crown in Chancery shall, on or before the day fixed for the trial, deliver or cause to be delivered, to the Registrar of the Judge who is to try the Petition, or his Deputy, the Poll Books, for which the Registrar or his Deputy shall give, if required, a receipt; and the Registrar or his Deputy shall keep in safe custody the said Poll Books until the trial is over, and then return the same to the Crown Office.

Poll books to be  
returned after  
trial.

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The Registrar by whom the notice of trial is to be transmitted to the Clerk of the Crown in Chancery is the Registrar of the Court of Appeal. But the Registrar to whom the Poll Books are to be delivered is the Registrar appointed by the Election Judges for the Court at which the Election Petition is to be tried : see *post* Rule 31.

**25.** At any time after an Election Petition is filed, either party, by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents, and returns whatsoever, relating to the Election, returned to, or in possession of, the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or Judge shall direct. And for the purpose of such production and inspection, and for the purposes of the trial of the Election Petition, the Clerk of the Crown in Chancery shall deliver or transmit, as and when directed by Rule of Court or Judge's order, the said books, lists, commissions, ballots, certificates, statements, documents, papers, and returns, in such manner, and to such officer, as by order of the Court or a Judge shall be directed.

Inspection of  
documents in  
possession of  
Clerk of Crown  
in Chancery.

The said books, lists, commissions, ballots, certificates, statements, documents, papers, and returns to be returned to the custody of the Clerk of the Crown in Chancery, after the trial of the Petition, or after the purpose has been served for which their delivery or transmission was required.

In addition to the discovery of documents in the possession of the Clerk of the Crown in Chancery provided for by this *Rule*, both the petitioner, and respondent, and any candidate for whom the seat is claimed, may, at any time "after the petition is at issue," be examined before an Examiner, or the Registrar of the Election Court, by the opposite party : *R. S. O. c. 11*, ss. 17, 18, 19 ; and an order for production of documents under oath by the opposite party, may be also obtained : *Ib. s. 27*.

Discovery by  
examination of  
parties.

Neither the statute *R. S. O. c. 11*, nor these *Rules*, define when a petition is to be deemed "at issue." By 34 Vict. c. 3, s. 9, the petition was to be deemed at issue after the time for making objections

to the security had expired, if none were made, or after such objections, if any, were disposed of; but the mode of giving security provided by that Act having been changed by subsequent statute, this provision of 34 Vict. c. 3, s. 9, was dropped at the revision of the statutes, and no other period of time substituted. In practice, a petition is deemed to be "at issue" as soon as it is served on the respondent.

Postponement of trial.

**26.** A Judge may from time to time, by order made upon the application of a party to the Petition, or by notice in such form as the Judge may direct to be sent to the Sheriff, postpone the beginning of the trial to such day as he may name, and such notice, when received, shall be forthwith made public by the Sheriff.

Trial postponed for non-arrival of Judge.

**27.** In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall, *ipso facto*, stand adjourned to the ensuing day, and so from day to day.

Formal adjournment of trial unnecessary.

**28.** No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another Judge.

In event of illness of Judge, trial may be recommenced before another Judge.

Special case, how stated.

**29.** The application to state a special case may be made to the Court of Appeal when sitting, or before a Judge at Chambers, by notice of motion setting forth such special case, upon hearing the parties.

The *R. S. O. c. 11, s. 62* is as follows :—

"62. When upon the application of any party to a petition duly made to the Court, it appears to the Court that the case raised by the petition can be conveniently stated as a special case, the Court may direct the same to be stated accordingly, and any such case shall be, as far as may be, heard before the Court, and the decision of the Court shall be final, and the Court shall certify to the Speaker its determination in reference to such special case."

after such objection of giving security subsequent statute, at the revision of d. In practice, a t is served on the

by order made Petition, or by direct to be sent of the trial to notice, when received by the Sheriff.

ving arrived at which the trial trial shall, *ipso* ay, and so from

ourt for the trial ry, but the trial continued from ed; and in the being disabled commenced and

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It will be seen that the Statute provides that the Court may direct a special case to be stated; this *Rule* also enables a Judge in Chambers to entertain an application to state a special case.

The meaning of the concluding words of the *Rule* "upon hearing the parties," does not appear to be very clear. It is possible that they are intended to mean that the application cannot be entertained by the Court, or a Judge, unless all parties appear. In ordinary civil proceedings a special case can be stated only by consent of parties: see *Rules S. C.* 248, 250.

**30.** The title of the Court of Record held for the trial of an Election Petition may be as follows:—

Title of Election Court.

"Court for the trial of an Election Petition for the (name the Electoral Division), between Petitioner, and , Respondent,"—

And it shall be sufficient so to entitle all proceedings in that Court.

**31.** An officer shall be appointed for each Court for the trial of an election Petition, who shall attend at the trial in like manner as the Clerks of Assize attend at the Assizes.

Registrar of Election Court

Such officer may be called the Registrar of that Court. He by himself, or in case of need, his sufficient Deputy, shall perform all the functions incident to the officer of a Court of Record, and also such duties as may be prescribed to him.

**Duties of Registrar of Election Court.**—It is the duty of the Registrar appointed under the provisions of this *Rule*, in addition to attending the sittings of the Court as therein provided, to receive from the Clerk of the Crown in Chancery, and keep in safe custody the Poll Books until the trial is over, and then return them to the Crown Office as provided by *Rule 24 ante*.

Duties of Registrar of Election Court.

He is also one of the officers who may take the preliminary examination of parties to the election petition: see *R. S. O. c. 11, s. 19*.

He is also to ascertain and certify the fees and expenses payable to witnesses examined at the trial: see *Rule 32 infra*, *R. S. O. c. 11, s. 54*.

He may also be appointed to conduct the scrutiny if one is ordered: see *R. S. O. c. 11, ss. 74-76*. In conducting a scrutiny he is to take



down the evidence in writing : *Ib.* s. 77. He may decide questions of law, or reserve them for the opinion of the Judge. He is to make a note in writing of his decision, or reservation, for the information of the Judge, and is to publicly announce such decision, or reservation, for the information of the parties : see *Ib.* s. 78.

**Witness fees.**

**32.** The reasonable costs of any witness shall be ascertained by the Registrar of the Court, and the certificate allowing them shall be under his hand.

Witnesses are entitled to be paid according to the scale allowed to witnesses on the trial of civil actions at the Assizes : see *Tariff*, cap. p. 553. The Registrar referred to is the Registrar of the Election Court, appointed under *Rule* 31, *ante*.

The Judge at the trial will not determine what witness fees should be paid : *Niagara Election, Black v. Plumb*, 10 C. L. J. 317 ; and see *Prescott Election, McKenzie v. Hamilton*, 32 U. C. Q. B. 303.

**Order of Judge to compel attendance of witness—form of.**

**33.** The order of a Judge to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of an Election Petition for (complete the title of the Court), the day of .

To A. B. (describe the person), you are hereby required to attend before the above Court at (place), on the day of , at the hour of (or forthwith if the case may be), to be examined as a witness in the matter of the said Petition, and to attend the said Court until your examination shall have been completed.

As witness my hand,

A. B.

Judge of the said Court

Witnesses may be subpoenaed, by either petitioner or respondent in the ordinary way, as on a trial at *nisi prius*. Subpoenas should be issued and signed by the Registrar of the Court of Appeal : *R. S. O.* c. 11, s. 51. This *Rule* applies when the Judge on the trial thinks any person should be compelled to attend as a witness, who appears to have been concerned in the election to which the petition relates : *Ib.* s. 52 ; even though such person has not been subpoenaed by either of the parties.

**Order to commit for contempt—form of.**

**34.** In the event of its being necessary to commit any person for contempt, the warrant may be in the following form:—

ay decide questions  
dge. He is to make  
or the information of  
ision, or reservation.

witness shall be  
Court, and the  
er his hand.

to the scale allowed  
izes: see Tariff, and  
strar of the Election

at witness fees should  
10 C. L. J. 317; and  
U. C. Q. B. 303.

el the attendance  
following form:—

Petition for (con-  
lay of

you are hereby re-  
art at (place), or

(or forthwith  
a witness in the

and the said Court  
en completed.

A. B.

of the said Court  
itioner or respondent

Subpenas should be  
t of Appeal: R. S. O. c. 11,  
e on the trial of the

witness, who appears  
the petition relating  
been subpoenaed

ecessary to commu-  
rant may be

At a Court holden on        at        for the trial of an  
Election Petition for the (*here name the Electoral  
Division*), before the Honourable        and one of the  
Judges for the time being for the trial of Election  
Petitions, pursuant to the "Controverted Elections Act."

Whereas, *A. B.* has this day been guilty, and is by  
the said Court adjudged to be guilty, of a contempt  
thereof: the said Court does, therefore, sentence the  
said *A. B.* for his said contempt to be imprisoned in  
the        Gaol for        and to pay to our Lady  
the Queen a fine of \$       , and to be further im-  
prisoned in the said Gaol until the said fine be paid.  
And the Court further orders that the Sheriff of the  
said County (*or as the case may be*) and all constables  
and officers of the Peace of any County or place where  
the said *A. B.* may be found, shall take the said *A. B.*  
into custody, and convey him to the said Gaol, and there  
deliver him into the custody of the Gaoler thereof to  
undergo his said sentence. And the Court further  
orders the said Gaoler to receive the said *A. B.* into his  
custody, and that he shall be detained in the said Gaol  
in pursuance of the said sentence.

Signed the        day of        A.D.

*To be signed by the Judge.*

"In any case arising under this Act (*R. S. O. c. 11*) any Judge for  
the time being on the *rota* for the trial of Election petitions, or any  
Judge of the Court of Appeal, shall for the purpose of enforcing  
obedience to any rule, or for punishing any contempt whatever, have  
the same power of granting a writ of attachment, to be issued from  
the Court of Appeal in vacation, as well as during the sittings of the  
said Court, as the Court of Queen's Bench has to enforce obedience to  
any rule or for punishing any contempt whatever": see *R. S. O. c. 11*,  
s. 105.

This Rule appears to be intended to supplement the procedure  
pointed out by the above section of the Statute; and is intended to  
apply to cases of contempt committed at the trial of the petition.

Other contempts may be punished by application for a writ of  
attachment, as pointed out by the Statute. The publication of com-  
ments in a newspaper with a view to influence the result of an election

Attachment for  
contempt when  
it may be ordered

trial is a contempt of Court and may be punished by attachment : see *Re Lincoln Election*, 2 App. R. 353.

Order to commit,  
to whom di-  
rected.

**35.** Such warrant may be made out and directed to the Sheriff, or other person having the execution of process of the Superior Courts, as the case may be, and to all constables and officers of the Peace of the County or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

When the Sheriff is an interested party, or his office is vacant, the writ or warrant should be directed to a Coroner.

Interlocutory  
questions, how  
disposed of.

**36.** All interlocutory questions and matters shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under the "Controverted Elections Act" as a Judge at Chambers in the ordinary proceedings of the Superior Courts, and such questions and matters shall be heard and disposed of by one of the Judges upon the rota, if practicable, and if not, then by any Judge at Chambers.

It seems open to question how far this *Rule* in purporting to confer jurisdiction in Election matters, upon a Judge in Chambers, not on the *rota*, is within the power of the Court. It might be argued that the jurisdiction in Election petitions being a purely statutory jurisdiction, is limited by the terms of the Statute, and only those Judges of the Court of Appeal, and of the various Divisions of the High Court of Justice, who are placed on the *rota* can exercise that jurisdiction, either in respect of trying such petitions on the merits, or hearing interlocutory applications arising thereon. It seems clear that no Judge not on the *rota* can try an Election Petition, and it might be argued that this *Rule* is inconsistent with the Act in purporting to give jurisdiction to a Judge not on the *rota* to hear applications which may in some cases put an end to the proceedings, and be equivalent to a trial of the petition.

The *Rule* appears to have been copied from the English *Rule*, 44, of 21st Nov. 1868.

attachment : see

and directed to  
the execution of  
may be, and  
of the County  
of contempt  
be sufficient  
and may be  
directed, or any

office is vacant, the

matters shall be  
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Chambers in  
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Chambers, not on  
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purely statutory  
and only those  
visions of the High  
exercise that juris-  
in the merits, or  
It seems clear  
Petition, and it  
the Act in pur-  
ta to hear appli-  
proceedings, and

English Rule, 44,

**37. Notice of an application for leave to withdraw a** Withdrawal of  
petition.  
Petition shall be in writing and signed by the Petitioners or their agent. It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

"Controverted Elections Act," (*name the Electoral* Form of notice  
of withdrawal.  
*Division*) of  
Petition of (*state petitioners*) presented day  
of

The Petitioner proposes to apply to withdraw his Petition upon the following ground (*here state the ground*), and prays that a day may be appointed for hearing his application.

Dated this day of  
(Signed).

**Withdrawal of Petition.**—An Election Petition cannot be withdrawn without the leave of the Court or a Judge : see *R. S. O. c. 11, s. 82*. And all the petitioners, if there be more than one, must concur in the application to withdraw the petition : *Ib. s. 88*.

Leave of Court  
necessary.

The notice of the application to withdraw is to be first published in the Electoral Division by the Returning Officer : see *Ib. s. 83 ; Rule 39 post*.

On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the Election may apply, and the Court or Judge may order him, to be substituted as a petitioner : see *R. S. O. c. 11, s. 84*. And when the Court or Judge is of opinion that the application to withdraw is induced by any corrupt bargain or consideration, may direct the security given on behalf of the original petitioner to remain as security for any costs incurred by such substituted petitioner, "and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner : " *Ib. s. 84, s.s. 2*.

Substitution of  
another person  
as petitioner, may  
be ordered.

The concluding words of this section appear to relate to the security by recognizance originally required to be given under 34 *Vict., c. 3* (O.), and should, apparently, have been struck out, when security by deposit of \$1,000 was substituted.

Where no order is made directing the deposit made by the original petitioner to stand as security as above mentioned, the substituted petitioner must give security in the same manner as if he were an original petitioner : see *R. S. O. c. 11, s. 85*.

Costs, liability  
for, of petitioner  
with drawing.  
Collusion must  
be denied by  
affidavit.

When a petition is withdrawn the petitioner is liable to pay the costs of the respondent unless the Court otherwise orders : see *Ib.* 87.

On an application to withdraw a petition, the petitioner and respondent must make positive affidavits that they have not been parties to any corrupt arrangement, and deny to the best of their knowledge information and belief, that any such arrangement has been made by their agents. The existence of any such arrangement must also be denied by the agents themselves : *Johnson v. Rankin* 5 C. P. D. 553.

When petition  
withdrawn,  
report to be  
made to Speaker

When a petition is withdrawn, the Court or Judge is in every case to report to the Speaker whether in its, or his, opinion, the withdrawal was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so the circumstances attending the withdrawal : see *R. S. O. c. 11 s. 89*.

How far Court  
can refuse to  
permit with-  
drawal of petition

It would seem notwithstanding *R. S. O. c. 11, s. 82, supra*, that the Judge, even though he be of opinion that the withdrawal of the petition is the result of a corrupt bargain, cannot refuse to permit its withdrawal where no person applies to be substituted as petitioner, but can only report the fact to the Speaker. But where an application to be substituted as petitioner is granted, the withdrawal of the petition is thereby prevented, and the Judge may order the deposit to remain as security for the costs incurred by any person substituted as petitioner : but see *Cunningham's Law of Elections*, (2nd ed.) 262.

Where the Court in view of the evidence adduced had recommended the withdrawal of the petition, and an elector then applied to be substituted as a petitioner, but failed to adduce any additional grounds for invalidating the election, the application of the elector to be substituted was refused, and leave to withdraw the petition was granted : *Re Peel Election*, *Hodg.* 485.

Notice of with-  
drawal to be left  
with Registrar.

**38.** The notice of application for leave to withdraw shall be left at the office of the Registrar.

The Registrar here referred to is the Registrar of the Court of Appeal.

Copy to be served  
on respondent  
and Returning  
Officer.

**39.** A copy of such notice of the intention of the Petitioner to apply for leave to withdraw his Petition shall be given by the Petitioner to the Respondent, and to the Returning Officer, who shall make it public in the Electoral Division to which it relates, and shall be forthwith published by the Petitioner in at least one newspaper published or circulating in the place, if any.

Notice to be pub-  
lished.

The following may be the form of such notice :—

“Controverted Elections Act.” In the Election  
Petition for in which is Petitioner and  
Respondent.

Notice is hereby given that the above Petitioner  
has on the day of lodged at the  
office of the Registrar, notice of an application to with-  
draw the Petition, of which notice the following is a  
copy (*set it out*). And take notice that, by the rule  
made by the Judges, any person who might have been  
a Petitioner in respect of the said Election may, within  
five days after publication by the Returning Officer of  
this notice, give notice in writing of his intention on  
the hearing of such application to apply for leave to  
be substituted as a Petitioner.

(Signed)

**40.** Any person who might have been a Petitioner in respect of the Election to which the Petition relates, may, within five days after such notice is published by the Returning Officer, give notice, in writing, signed by him or on his behalf, to the Registrar, of his intention to apply at the hearing to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

Any person who might have been petitioner, may apply to be substituted.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

**41.** The time and place for hearing the application shall be fixed by a Judge, and whether before the Court of Appeal, or before a Judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Registrar as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given

Time and place of hearing of application for withdrawal, to be fixed by Judge.

Notice of, to be given to persons who desire to be substituted as petitioners.

notice to the Registrar of an intention to apply to be substituted as Petitioners, and otherwise in such manner and at such time as the Judge directs.

The notice of the application required to be given to the person or persons who may desire to be substituted as petitioner or petitioners, must be given by the party making the application for withdrawal.

Abatement of  
petition.

Notice of, to be  
given.

**42.** Notice of abatement of a Petition, by death of the Petitioner or surviving Petitioner, under section 90 of the said Act, shall be given by the party or person interested, in the same manner as notice of an application to withdraw a Petition; and the time within which application may be made to the Court, or a Judge, by motion or summons at Chambers, to be substituted as a Petitioner, shall be one calendar month, or such further time, as upon consideration of any special circumstances, the Court, or a Judge, may allow.

The death of a sole petitioner, or the survivor of several petitioners, causes an abatement of the petition: see *R. S. O. c. 11, s. 90*. The abatement does not affect the liability of the petitioner for costs previously incurred: see *Ib. s. 91*.

Ordinarily, the personal representative of a deceased petitioner would be the proper person to give the notice of abatement.

Service of

The notice of abatement is to be served in the manner prescribed by *Rules 38, 39, ante*.

Any person who might have been originally a petitioner may, on the abatement of a petition, apply to be substituted as a petitioner, and on being substituted he must give security as upon filing a petition: see *R. S. O. c. 11 ss. 92, 93*.

Dissolution of  
Parliament, effect  
of.

The effect of a dissolution of Parliament while an Election Petition is pending, before the hearing of such Petition, is, that the Petition drops, and the Court will order the sum deposited by the Petitioner by way of security for costs, to be returned to him: *Carter v. Mills*, L. R. 9 C. P. 117.

Death of Respon-  
dent, or declara-  
tion by House  
that his seat is  
vacant—proceed-  
ings on.

**43.** If the Respondent dies, or if the Legislative Assembly have resolved that his seat is vacant, any person entitled to be a Petitioner under the Act in re-

spect of the election to which the petition relates, may give notice of the fact in the Electoral Division, by causing such notice to be published in at least one newspaper published or circulating therein, if any, and by leaving a copy of such notice signed by him, or on his behalf, with the Returning Officer, and a like copy with the Registrar.

The object of giving the notice is to enable the person giving it, or any other person who might have been a petitioner to apply to be substituted as respondent to oppose the petition, or so much thereof as may remain undisposed of : see *R. S. O. c. 11, s. 94*.

The Registrar with whom the copy of the notice is to be left, is the Registrar of the Court of Appeal.

**44.** The manner and time of the Respondent giving notice to the Court, that he does not intend to oppose the Petition, shall be by leaving notice thereof, in writing, at the office of the Registrar, signed by the Respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice.

Disclaimer by Respondent, how given.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

The notice that a Respondent does not intend to oppose the Petition is also to be given in the Electoral Division: see *Rule 45, infra* ; *R.S.O. c. 11, s. 94*.

Any person who might have been a Petitioner, " may within the prescribed time after the notice is given," apply to the Court, or Judge, to be admitted as a respondent: *Ib. Rule 46 post* was probably intended to fix the time within which such application should be made, but the reference to the sections of the Statute in that *Rule* appear to be erroneous; at all events, sec. 94 is not referred to therein, and there appears to be therefore no specific time prescribed.

**45.** Upon such notice being left at the office of the Registrar, he shall forthwith send a copy thereof by the post to the Petitioner or his Agent, and to the Sheriff, who shall cause the same to be published in the Electoral Division.

Notice of Disclaimer by Respondent to be forwarded to Petitioner and Sheriff.



Time for applying to be admitted as Respondent under R. S. O. c. 10, ss. 84, 92.

**46.** The time for applying to be admitted as a Respondent in either of the events mentioned in the 84th and 92nd sections of the Act, shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or Judge may allow.

The references to the sections of the Statute in this *Rule* appear to be erroneous; section 84 relates to applications to be substituted as a petitioner upon the withdrawal of a petition; and section 92 relates to applications to be substituted as a petitioner upon an abatement of a petition. The only section relating to applications to be substituted as a respondent, is the 94th section, to which this *Rule* was probably intended to refer.

The time for applying to be substituted as a petitioner under ss. 84 and 92 is prescribed by *Rules* 40 and 42, *ante*.

Costs how taxed.

**47.** Costs shall be taxed by the Registrar, or at his request by one of the Taxing Officers of the Supreme Court of Judicature for Ontario, upon the order of the Court, or Judge's order, by which the costs are payable; and costs when taxed may be recovered by execution issued upon the order of Court, or Judge, ordering them to be paid, and issuing execution upon such order against the person by whom the costs are ordered to be paid; or in case there be money in the Bank available for such purpose, then, to the extent of such money, by order of any Judge, by cheque signed by the Registrar, and countersigned by the Judge.

Office fees

The office fees payable for inspection, office copies, enrollment and other proceedings under the Act, and these Rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

For tariff of fees: see *ante* p. 553.

**48.** An agent employed for the Petitioner, or Respondent, shall forthwith leave written notice at the office of the Registrar of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

Agent of Petitioner, or Respondent, to leave notice of his appointment with Registrar. Service on such agent sufficient.

The agent must be a person entitled to practise as a Solicitor of the Supreme Court of Ontario : see *R. S. O. c. 11, s. 107*.

The notice must be left at the office of the Registrar of the Court of Appeal.

**49.** At the time appointed for the trial of any Election Petition, the Petitioner shall leave with the Registrar, for the use of the Judge or Judges, at the trial, fairly written on one side of the paper only—a copy or copies of the petition and of all the proceedings thereon, which show the several matters to be tried, including the particulars of objection on either side. The correctness of which copies in so far as the proceedings are filed with the Registrar, shall be certified by the said Registrar. The Judge may allow amendment of the said copies, or in default of such copy being delivered, the Judge may refuse to try the Petition or may allow a further time for delivery of the same, or may adjourn the trial, in every case upon such terms, as to costs and otherwise, as the Judge shall see fit to impose.

Record to be left for Judge at trial.

Amendment of particulars.

The Registrar referred to in this *Rule* is the Registrar of the Court of Appeal.

**50.** No proceeding under the "Controverted Elections Act" shall be defeated by any formal objection.

Formal objections.

When a petition has been filed, it would seem that it cannot be dismissed for any mere irregularity, but the Court is bound to dispose of it on the merits, unless it be withdrawn : see *Regina ex rel. Grant v. Coleman*, 7 App. R. 626.

Publication of  
Rules of Court.

**51.** Any Rule made or to be made in pursuance of the Act, shall be published by a copy thereof being put up in the office of the Registrar.

JNO. G. SPRAGGE, C. J. O.

GEO. W. BURTON, J. A.

C. S. PATTERSON, J. A.

JOS. C. MORRISON, J. A.

Rules to be laid  
before Parlia-  
ment.

The *Rules* made in pursuance of *R. S. O. c. 11*, are to be laid before the Legislative Assembly within three weeks after they are made, if the Assembly is then sitting, and if not, then within three weeks after the beginning of the next session : *R. S. O. c. 11, s. 103, s.s. 3.*

English practice,  
how far intro-  
duced.

So far as the *Rules* from time to time in force to do not extend, the principles, practice, and rules on which Election Petitions touching the election of members to the House of Commons in England, were on the 15th February, 1871, dealt with, are, where not inconsistent with *R. S. O. c. 11*, to be observed : see *R. S. O. c. 11, s. 104.*

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## GENERAL ORDERS

OF

## THE COURT OF APPEAL.

30th day of March, 1878.

1. Upon, from, and after, this date, all Rules and Orders heretofore made, and now in force regulating the practice and proceedings in civil causes in this Court are annulled, except the Rules now in force respecting appeals to Her Majesty in Privy Council, and the following Orders, made under the authority of the Court of Appeal Act, are substituted for the same.

Former Orders  
repealed, except  
those relating to  
appeals to the  
Privy Council.

The *Orders* relating to appeals to Her Majesty in Privy Council, are to be found *post* p. 779.

2. Unless otherwise specially ordered by the Court appealed from, or a Judge thereof, the security required by sections 26 and 27 of the said Act shall be personal and by bond, and may be in the form given in the Appendix, *mutatis mutandis*. (Form A.) Provided that in any case in which execution may be stayed on the giving of security under section 27, such security may be given by the same instrument, whereby the security prescribed in section 26 is given.

Security to be by  
bond.

Form of bond.

Section 26 of *The Court of Appeal Act*, (R. S. O. c. 38,) was reenacted with amendments by *The Judicature Act*, s. 38, and reads now as follows :

Security for costs of appeal, when to be given.

38. No appeal [to the Court of Appeal] shall be allowed unless notice thereof is given in writing to the opposite party, and to the Clerk of the Crown and Pleas, or Registrar of the proper Court, within one month after the judgment complained of, or within such further time as the Court appealed from, or a Judge thereof may allow, nor unless [within three months after the judgment complained of or within such further time as a Court, or Judge, aforesaid may allow] the appellant gives proper security to the extent of \$400, to the satisfaction of the Court appealed from, that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is [in whole, or in part,] affirmed.

The words in brackets show the amendments introduced by *The Judicature Act*.

Section 27 of *The Court of Appeal Act*, (R. S. O. c. 38,) is as follows :—

Stay of execution, or proceedings, pending appeal.

27. Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases :

Documents, or personal property, ordered to be assigned or delivered, to be brought into Court.

1. If the judgment appealed from directs the assignment, or delivery, of documents, or personal property, execution shall not be stayed until the things directed to be assigned, or delivered, have been brought into the Court appealed from, or placed in the custody of such officer or receiver as that Court appoints, nor until security has been given to the satisfaction of that Court, and in such sum as it directs, that the appellant will obey the order of the Court of Appeal.

Deeds ordered to be executed, to be executed and deposited in Court.

2. If the judgment appealed from directs the execution of a conveyance, or any other instrument, execution shall not be stayed until the instrument has been executed and deposited with the proper officer of the Court appealed from, to abide the judgment of the Court of Appeal ;

Security to be given when sale, or delivery of possession, of property ordered

3. If the judgment appealed from directs the sale, or delivery of possession, of real property, or chattels real, execution shall not be stayed until security has been entered into to the satisfaction of the Court appealed from, and in such sum as that Court directs, that during the possession of the property by the appellant, he will not commit, or suffer to be committed, any waste on the property, and that, if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, and also, in case the judgment is for the sale of property and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency ;

4. If the judgment appealed from directs the payment of money, execution shall not be stayed until the appellant has given security, to the satisfaction of the Court appealed from, that if the judgment, or any part thereof, be affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment may be affirmed, if it be affirmed only as to part, and all damages awarded against the appellant on the appeal.

Security to be given for money ordered to be paid.

**Notice of Appeal.**—In addition to the notice of appeal required to be given under *J. A. s. 38 supra*, notice of appeal must also be served on the Registrar of the Court of Appeal, under *The Court of Appeal Act, (R. S. O. c. 38, s. 30.)* This notice must be given before giving the security required by *The Court of Appeal Act*. The notices to the Registrar of the Court appealed from, and the Registrar of the Court of Appeal must be filed. The notice may be as follows :

Notice of appeal, to whom to be given.

In the High Court of Justice,

— Division.

Form of notice of appeal.

Between A. B. Plaintiff, (appellant or respondent).

and

C. D. Defendant, (respondent or appellant).

Take notice that A. B. the above named plaintiff hereby appeals from the (judgment, order or decision) pronounced in this cause (or matter) by the Division of this Court, [or by Mr. Justice ] on the day of 18 whereby [a rule nisi obtained by the plaintiff for a new trial was discharged], (or as the case may be). Dated, &c.,

(Signature).

See *R. S. O. c. 38, s. 30.*

The notice of appeal must be a formal notice and not a mere communication, verbal, or otherwise, of an intention to appeal: *Re Blyth and Young, 13 Chy. D. 416; Re New Callao Co., 22 Chy. D. 484.*

Notice must be formal notice.

Where some of several defendants appeal, notice of appeal need not be served on their co-defendants, even though relief over is claimed against them by the respondent: *Freed v. Orr, 6 App. R. 690.* It is sufficient for the respondent claiming relief, to serve the non-appealing defendants with the reasons against the appeal, a copy of the appeal book, and notice of the hearing of the appeal: *Ib.*; and see *Ord. 23, post.*

Co-defendants, when they need not be served.

Where the notice was served on the last day after office hours, the notice was allowed, but the Court doubted whether the section requiring notice applied in that particular case: *Rose v. Hickey, 7 P.*

Notice, when allowed to be served after time has elapsed.

R. 390; and where notice had been served in due time on the respondent, but, through the negligence of a clerk of the appellant's solicitor, notice had not been served on the Registrar of the Court appealed from, notice was allowed to be served on payment of costs: *Re Laws, Laws v. Laws*, 9 P. R. 72; but in England a delay of three days beyond the prescribed time in delivering notice to the officer, was held fatal to the right of appeal: *Ex parte Lamb*, 45 L. T. N. S. 639, and see *Ex parte Lyon. Ib.* 768; *Re Blyth and Young*, 13 Chy. D. 416; and see *Wright v. Leys*, 10 P. R. 354.

Notice of appeal not necessary to give Court jurisdiction.

The service of notice as required by the Statute is not a condition precedent to the jurisdiction of the Court to hear the appeal, and may be waived by the respondent: see *Park Gate Iron Co. v. Coates*, 5 L. R., C. P. 634.

Leave to appeal after time elapsed, when granted.

**Leave to Appeal.**—Where the time for appealing has gone by, leave to appeal will not usually be granted except under very special circumstances, a mere mistake of the solicitor or his clerk is insufficient ground for extending the time: *Rumohr v. Marx*, 19 C. L. J. 10; *Re New Callao*, 22 Chy. D. 486; *Berdan v. Birmingham*, 7 Chy. D. 24; *International F. Co. v. City of Moscow G. Co.*, 7 Chy. D. 241; *Craig v. Phillips, Ib.* 249; *McAndrew v. Barker, Ib.* 701; *Re Mansell, Ib.* 711; *Miller v. Brown*, 9 P. R. 542; 19 C. L. J. 233; *Wilby v. Standard*, 19 C. L. J. 318; *Gordon v. G. W. R.*, 6 P. R. 300; but see *Foley v. Canada P. L. & S. Co.*, 18 C. L. J. 444; *Re Padstow. W. N.* (82) 1; 51 L. J. Chy. 344; *Re Jacques*, 30 W. R. 394, where the delay was held sufficiently excused. Where leave to appeal is necessary, and the appellant is prompt in applying for leave, the month for delivering notice of appeal will be computed from the date the leave is granted: *McRae v. White*, 9 P. R. 288.

Where leave granted—time for giving notice of appeal.

Security for costs of appeal, how given.

**Security for Costs.**—In every case of appeal to the Court of Appeal security must be given, in the sum of \$400, for the due prosecution of the appeal, and for payment of the costs of the appeal. This security may be given by the bond of the appellant or appellants or one or more of them (unless the Court dispenses with the execution by the appellant), and of two sufficient sureties: see *Ord. 3 post* p. 751; or by payment of \$400 into Court: *Connolly v. O'Reilly*, 8 P. R. 159; and even after a bond has been given; the Court appealed from may authorize the substitution of a deposit: *Chatham v. Erie*, 7 P. R. 399. An order for leave to pay in \$400 in lieu of giving a bond may be obtained *ex parte*: *Connolly v. O'Reilly, supra*; but it is not sufficient to deposit the money, and obtain a certificate of the deposit: it must also appear that the security so given, is to the satisfaction of the Court appealed from, or a Judge thereof: *Macdonald v. Abbott*, 3 S. C. R. 278. As to the time for putting in security: see *R. S. O. c. 38, ss. 45, 46, 48*: *McRae v. White*, 9 P. R. 288, *supra*.

An appeal under *The Joint Stock Companies Winding-up Act*, 41 Viet. c. 5, s. 27, (O.), cannot be entertained where security has not been given within eight days from the rendering of final judgment, or order, appealed from: *Re Union Ins. Co.*, 7 App. R. 783.

Appeal disallowed, where security not put in in time.

Where the sureties become insolvent a new surety may be ordered to be given: *Gage v. Canada Publishing Co.*, 10 P. R. 169; any application for further security for the costs of the appeal must be made to the Court appealed from: *Lumsden v. Davis*, 10 P. R. 10; 19 C. L. J. 34.

Further security, when granted.

**Staying Execution.**—When the appellant desires to stay the execution of the judgment appealed from, pending the appeal, he must further comply with the provisions of *R. S. O. c. 38, s. 27, supra*. Execution will not be otherwise stayed: *Fox v. Toronto and Nipissing R. W. Co.*, 26 Gr. 352; *Gossage v. Canadian L. & E. Co.*, 24 U. C. Q. B. 452.

Staying execution pending appeal.

The bond for \$400 required by *J. A. s. 38*, is only security for the costs of the appeal, and does not stay execution for the costs awarded by the judgment appealed from: *Powell v. Peck*, 8 P. R. 85; *Heward v. Heward*, 2 Chy. Ch. R. 245; *Grand Trunk R. W. Co. v. Ontario and Quebec R. W. Co.*, 9 P. R. 420.

Where the judgment directs the payment of money, either as debt, damages, or costs, the security must be given as prescribed by *R. S. O. c. 38, s. 27, s.s. 4, supra*, otherwise proceedings to enforce payment may be prosecuted, pending the appeal. The security, if by bond, is required to be in double the amount ordered to be paid when it is under \$10,000, see *Ord. 4, infra*. Instead of giving a bond, the money may be paid into Court to abide the result of the appeal, in such case some additional sum, to answer the difference between the legal rate of interest, and that allowed on deposits in Court, may be required to be paid: see *McDonald v. Worthington*, 8 P. R. 554.

Security required, when judgment appealed from directs payment of money.

The application to stay execution must be made to the Court appealed from, on notice: *Grand Trunk R. W. Co. v. Ontario and Quebec R. W. Co.*, *supra*.

Application to stay execution, must be made to Court appealed from.

Where, in consequence of the insolvency of the sureties pending the appeal, further security is required, the application must be made to the Court appealed from: *Lumsden v. Davis*, 10 P. R. 10; 19 C. L. J. 34.

Further security, when ordered.

If the money has been made by the Sheriff, but not paid over before the Judge's *fiat* to stay execution is served on the Sheriff, the appellant may demand back the amount levied from the Sheriff: *R. S. O. c. 38, s. 29*. And where a suit was brought to restrain an action of ejectment, and the plaintiff failed, and thereupon a writ of

When money made under execution, will be ordered to be refunded, or possession of land be ordered to be restored.



*hab. fac. poss* had been executed before the proceedings thereon could be stayed, possession was ordered to be restored to the appellant pending the appeal on his giving security as required by *R. S. O. c. 38, s. 27, s.s. 3*: *Campbell v. Royal Canadian Bank*, 19 Gr. 477. But when the money has been made by the sheriff, and transmitted to the respondent's solicitor, before an order staying execution is served, such money will not be ordered to be refunded, even though the order staying the execution be granted before the money actually reached the solicitor's hands: *McDonell v. McKay*, 2 Chy. Ch. R. 354; see further, *Ord. 4, 5, 7, 8, post*; *R. S. O. c. 38, ss. 27, 28*.

Staying Proceedings when ordered pending appeal.

**Staying Proceedings.**—Pending an appeal, proceedings upon accounts and inquiries are not in general stayed. *Hyam v. Terry*, 19 W. R. 32; *Whitehead v. Buffalo and L. H. R. W. Co.*, 7 Gr. 578; *Butler v. Standard Fire Ins. Co.* 8 P. R. 41; *Heward v. Heward*, 2 Chy. Ch. R. 242; (but see *Bank of U. C. v. Pottruff*, 8 U. C. L. J. 328); but where the appeal, if successful, would be nugatory if proceedings were continued pending the appeal, they will be stayed: *Wilson v. Church*, 12 Ch. D. 454; 41 L. T. N. S. 50; 48 L. J. Chy. 690; 28 W. R. 284; and see *Adair v. Young*, 11 Chy. D. 136; 40 L. T. N. S. 591; *Walford v. Walford*, 3 L. R. Chy. 812; *Goldie v. Date P. S. Co.*, 7 P. R. 1; *Cotton v. Corby*, 5 U. C. L. J. 67; but not otherwise; *McMurray v. Grand Trunk R. W. Co.*, 3 Chy. Ch. R. 125. In *Re Palmer*, 48 L. T. N. S. 52, the Court refused to stay the trial of issues of fact, pending an appeal on a question of law; and see *McDonald v. Murray*, 19 C. L. J. 158, where a new trial was allowed to proceed, pending an appeal from the rule granting the new trial, but in *Goldie v. Date*, 7 P. R. 1, a notice of trial given without leave, pending such an appeal, was held irregular.

Not granted when time for appealing has elapsed.

The application to stay proceedings will not be entertained if the time for appealing has elapsed: *Brigham v. Smith*, 3 Chy. Ch. R. 313.

Injunction, when suspended.

Proceedings to commit a defendant for a breach of an injunction, will not be stayed pending an appeal from the judgment, or order, granting the injunction: *Gamble v. Howland*, 3 Gr. 281, 303; and see *McLaren v. Caldwell*, 29 Gr. 438; and pending an appeal from a judgment awarding an injunction, the injunction will not be suspended: *Ib.*, and see *S. C. 6 App. R. at p. 434*: *Fox v. Toronto and Nipissing R. W. Co.*, 26 Gr. 352, unless in the case of a mandatory injunction, where obedience to the injunction would render the appeal nugatory: see *Dundas v. Hamilton and Milton Road Co.*, 19 Gr. 455; but see *McGarvey v. Strathroy*, 6 O. R. 138; 19 C. L. J. 393, where Proudfoot, J., refused a sequestration to enforce an injunction restraining the defendants, from permitting water to flow on plaintiff's land, pending an appeal, after security had been given under section 26.

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*R. S. O. c. 38, s. 27*. But when  
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proceedings upon  
*Hyam v. Terry*, 19  
Co., 7 Gr. 578;  
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y. 812; *Goldie v.*  
C. L. J. 67; but  
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: *Fox v. Toronto*  
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R. 138; 19 C. L.  
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Where a sum of money is ordered to be paid, or in default a receiver is directed to be appointed, the appointment of a receiver can only be stayed pending an appeal, on security been given for the amount ordered to be paid, as required by *R. S. O. c. 38, s. 27, s.s. 4: Fox v. Toronto and Nipissing R. W. Co.*, 26, Gr. 352.

Appointment of  
Receiver, when  
stayed.

In mortgage cases, simply for foreclosure, or sale, proceedings may be stayed pending an appeal without security being given: *Bank of U. C. v. Pottroff*, 8 U. C. L. J. 328. And it would seem that the Court appealed from, may, in its discretion, irrespective of *The Court of Appeal Act*, suspend the operation of its judgment in any case pending an appeal: *Cotton v. Corby*, 5 U. C. L. J. 67.

Mortgage actions  
when stayed.

The costs of applications to stay execution, or proceedings, are in the discretion of the Court: *Rule S. C. 428*.

Costs of applica-  
tion to stay pro-  
ceedings.

Where money has been paid into Court in order to secure a stay of execution pending an appeal to the Court of appeal; in the event of the appeal proving successful the appellant is entitled to have the money paid out to him, notwithstanding the respondent may desire to appeal: *Wilson v. Beatty, Re Donovan*, 10 P. R. 71; 19 C. L. J. 404; *Atherton v. B. N. A. Co.*, 5 L. R. Chy. 720; *Lindsay Petroleum Co. v. Hurd*, 3 Chy. Ch. R. 16; *Billington v. Provincial Ins. Co.*, 9 P. R. 67; *Crossman v. Shears*, 15 C. L. J. 110; *McLaren v. Caldwell*, 9 P. R. 118; and the respondent in such a case, if he desire to stop the payment out, must give security for damages consequent on its detention in Court: *McDonald v. Worthington*, 8 P. R. 554. But where a sum of money has been paid into Court not to answer any specific purpose, but generally to abide further order, then the Court has a discretion as to ordering the money to be paid out pending an appeal, and in such a case, may require security to be given to refund if required: *King v. Duncan*, 9 P. R. 61.

Money paid into  
Court pending  
appeal—disposi-  
tion of.

Money paid into Court as security for costs by the respondent, is not usually ordered to be paid out pending an appeal: *National Ins. Co. v. Egleson*, 9 P. R. 202; but where it was shewn that the respondent had goods in this country, and in the appellant's possession, sufficient to answer costs, a sum of money so paid in was ordered to be paid out of Court, notwithstanding the pendency of an appeal: *Napier v. Hughes*, 9 P. R. 164.

Money paid in  
as security for  
costs, when  
ordered to be  
paid out.

3. The bond shall be executed by the appellant or appellants, or one or more of them, and by two sufficient sureties, unless such Court or Judge shall think fit to dispense with the execution thereof by the appellant.

Appeal bond,  
parties to.

If surety die, or become insolvent further security may be ordered.

If either surety die, or become insolvent, pending the appeal, an application may be made to compel the appellant to substitute another : *Saunders v. Furnival*, 2 Chy. Ch. R. 159; *Gage v. Canada Publishing Co.*, 20 C. L. J. 134; 4 C. L. T. 200. The application must be made to the Court appealed from: *Lumsden v. Davis*, 19 C. L. J. 234.

Exceptions to sureties.

A bond cannot be excepted to on the ground that the sureties are "standing sureties" of the applicant, in the absence of evidence as to their insufficiency: *Norval v. Canada Southern R. W. Co.*, 7 P. R. 313. It is irregular for the solicitor of the appellant to become surety in an appeal bond: *Beckitt v. Wragg*, 1 Chy. Ch. R. 5; *Grand Trunk R. W. Co. v. Ontario and Quebec R. W. Co.*, 3 C. L. T. 173.

A married woman is not a sufficient surety: *Mullin v. Pascoe*, 8 P. R. 372.

When the title to land, in respect of which a surety qualified, was not registered, it was held that he was an insufficient surety unless he procured registration of his title: *Adamson v. Adamson*, 9 P. R. 96.

Notice of discontinuance of appeal—effect of.

When an appellant gives notice of discontinuance of his appeal, the respondent may without further order, tax his costs of the appeal, and, in case of non-payment, obtain an order for the delivery of the appeal bond to him for suit: *Hughes v. Hughes*, 19 C. L. J. 10.

Security to be given to procure stay of execution.

4. When the judgment appealed from directs the payment of money, the security required by section 27, sub-section 4, shall be in double the amount so directed to be paid; provided always that, in cases where the security to be given shall be in a sum above two thousand dollars, it shall be in the discretion of the Court appealed from, or of a Judge thereof, to allow security to be given by a larger number of sureties apportioning the amount among them as shall appear reasonable; and provided further, that, where the amount by the judgment directed to be paid exceeds \$10,000, it shall be in the discretion of such Court or Judge to allow security to be given for such amount less than double as shall appear reasonable.

When dispensed with in mortgage actions.

See s. 27, s.s. 4, in note to Ord. 2, ante p. 746. It has been held that sub-section 4 does not apply to appeals from judgments, in mortgage cases for foreclosure, or sale, simply: *Bank of Upper Canada*

*v. Pottroff*, 8 U. C. L. J. 328, but where such a judgment also contains a personal order for payment of the mortgage debt, then the sub-section would apply and security must be given before execution can be stayed.

Where, in a suit for an account, at the hearing of the cause, a sum of money was directed to be paid into Court, pending a reference to take the accounts, it was held that proceedings might be stayed on such direction, pending an appeal, upon security being given : *Whitehead v. Buffalo and Lake Huron R. W. Co.*, 7 Gr. 578.

Suit for account.

5. When the judgment appealed from directs the sale, or delivery of possession, of real property, or chattels real, the security required by section 27, sub-section 3, shall be taken in double the yearly value of the property in question, unless the Court appealed from, or a Judge thereof, shall otherwise direct.

Security required when sale, or delivery of possession of property ordered.

For s. 27 s.s. 3, see *Ord. 2 ante*, p. 746. The Court refused to stay execution of a judgment for defendant in replevin for a month to enable the plaintiff to give security : *Scott v. Carveth*, 20 U. C. Q. B. 435.

6. The parties to every such bond as sureties shall by affidavit respectively make oath that they are resident householders or freeholders in Ontario, and severally worth the sum mentioned in such bond, over and above what will pay and satisfy all their debts, and such affidavit may be in the form given in the Appendix. (Form B.)

Affidavit of justification to be made by sureties.

7. The bond, with an affidavit of the due execution thereof, and affidavit of justification, shall be deposited with the Clerk, or Registrar, of the Court appealed from in Toronto, and shall be deemed to be perfected and allowed, unless, within fourteen days after being served with notice thereof, the respondent shall move for its disallowance.

Bond and affidavits of execution, and justification, to be filed.

Bond allowed 14 days after notice of filing, unless moved against.

The bond, and affidavits of execution, and justification, are separate documents, and each must be stamped with a proper filing stamp : *McBeth v. Smart*, 1 Chy. Ch. R. 269.

Bond and affidavits to be filed.

The affidavits of execution, and justification, should be entitled in the cause.

Affidavit of justification cannot be dispensed with.

The affidavit of justification cannot be dispensed with : *Donnelly v. Jones*, 4 Chy. C. R. 48.

Motion for disallowance of bond when made.

Where the respondent objects to the sufficiency of the bond, he must move to disallow it, or it will, under this *Order*, stand allowed after the lapse of fourteen days from its filing. The motion should be made in the Court appealed from. The application may be entertained by the Master in Chambers, or, when the bond is filed in an outer County, by a Local Master, or County Court Judge, having jurisdiction : see *Rule S. C. 422* ; *Holmested's Manl. Pr. 214* ; *Brigham v. Smith*, 1 Chy. C. R. 334.

Affidavits may be used.

Affidavits may be read in opposition to the affidavits of justification of the sureties : *Campbell v. Royal Canadian Bank*, 6 P. R. 43 ; *Brigham v. Smith*, 1 Chy. Ch. R. 334 ; and the sureties are also liable to cross-examination on their affidavits of justification : *Rule S. C. 283*, and see *Holmested's Manl. Pr. 204, 205* ; but see *Firth v. Ryan*, 20 C. L. J. 175.

Sureties may be examined.

Objections to sureties.

The sureties cannot be objected to, merely on the ground that they are "standing sureties" for the appellant, if not shown to be otherwise insufficient : *Norval v. Canada Southern R. W. Co.*, 7 P. R. 313. It is irregular for the appellant's solicitor to become a surety : *Beckett v. Wragg*, 1 Chy. Ch. R. 5. A married woman is an insufficient surety : *Mullin v. Pascoe*, 8 P. R. 372.

Fiat of Judge to Sheriff to stay execution, when granted.

Where the bond stands allowed under this *Order*, by reason of the lapse of fourteen days from its filing, a Judge's fiat to the sheriff to stay execution may be obtained : *R. S. O. c. 38, s. 28*. But where the appellant claims to stay execution before the fourteen days have expired, then a special application for that purpose is necessary under the following *Order*.

Action on appeal bond, when stayed.

Where the appeal to the Court of Appeal is dismissed, an action on the appeal bond will be stayed where the appellant has given proper security, and is prosecuting an appeal from the decision of the Court of Appeal to the Privy Council : *McLaren v. Stephen*, 19 C. L. J. 404.

Special application to stay execution may be made.

8. The appellant may, after such deposit, make a special application, before the expiration of fourteen days, to stay execution in any of the cases mentioned in section 27 of the said Act.

See section 27 in note to *Ord. 2, ante p. 746*.

9. After the security has been perfected, the appellant shall prepare a draft of the case mentioned in the 31st section of the said Act, and shall submit such draft to the respondent, who shall return the same within four days, with his modifications or suggestions, and in the event of differences, the appellant shall give two days' notice of an application to the Court, or Judge, to settle the case, in pursuance of the said section; and if in the opinion of the Court or Judge such application was occasioned by the unreasonable conduct of either party, such party may be ordered to pay the costs thereof.

After security perfected, case to be prepared—draft to be submitted to respondent.

The security referred to in this Order is the security for \$400 for the costs of appeal, and not the security required to be given in order to secure a stay of execution.

When one of several defendants appeals, the other defendants are not entitled to notice of settling the case, even though the plaintiff claim relief over against them: *Freed v. Orr*, 6 App. R. 690; and see *Ord. 23, post*.

Co-defendants not entitled to notice of settling case.

10. Where the case has been settled by the parties themselves, no costs shall be taxed, either between party and party, or Solicitor, or Attorney, and client, for any matter stated in the case, which was not reasonably necessary to raise the question in appeal.

Costs of unnecessary matter included in appeal book not to be allowed.

The case should only contain as much of the proceedings as is necessary to raise the questions involved in the appeal: see *Parsons v. Standard Insurance Co.*, 4 App. R. at p. 330, per Burton, J. A., and see *Sickles v. Morris*, 1 Charl. Notes of Cases, 174.

Where the notes of the evidence have been lost, the Court of Appeal may allow the evidence to be taken over again: *Ex parte Firth, Re Cowburn*, 19 Chy. D. 419; 51 L. J. Chy. 473.

11. The appellant shall serve his reasons of appeal along with, and as part of, the draft case mentioned in the 9th Order, and the respondent shall serve his reasons against the appeal, within ten days from such service, or within such further time as a Judge of the Court of Appeal may allow.

Reasons of, and against appeal—to be served.

Reasons of appeal, when only part of judgment is appealed from.

12. If the appeal is from a part only of the judgment, the reasons of appeal shall specify the part.

Neglect of respondent to serve reasons against appeal—effect of.

13. If the respondent shall neglect to serve reasons against the appeal, the Court may hear the appeal *ex parte*, and give judgment thereon without the intervention of the respondent.

Appeal book to be printed.

14. Upon being served with the respondent's reasons against the appeal, or upon his having made default in service thereof, the applicant shall cause appeal books to be printed containing the case as settled by the parties, or the Judge, and the reasons for the appeal, and the reasons against the appeal, if such latter reasons have been served as aforesaid, and any notice given under the 16th of these Orders, and forthwith deliver one of such copies to the Registrar by whom the same shall be filed as the stated and settled case, and ten copies for the use of the Judges and Officers of the Court; *and also thirty copies for the purpose of being delivered, in the event of an appeal to the Supreme Court of Canada, to the party appealing to that Court for use upon such appeal.*

Number of copies to be delivered.

*Such additional thirty copies are not required to be deposited in cases of appeal from County Courts.*

The words in italics were added by Ord. 68, *post*.

Leave to deliver reasons against appeal, after book printed, may be granted.

15. The respondent may after such printed book has been delivered to the Registrar, apply to a Judge of the Court of Appeal for leave to serve his reasons upon affidavit accounting for the delay, and such leave may be given upon such terms as the Judge may think proper.

Cross appeal unnecessary—proceedings in lieu of.

16. A cross appeal shall not under any circumstances be necessary, but if a respondent intends upon the hearing to contend that the decision should be varied, he shall with his reasons against the appeal give notice

of such contention to any parties who may be affected by such contention, and such notice shall concisely state the grounds of such contention in the same manner as reasons of appeal are stated. The omission to give such notice, shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Cross appeal.

See English Rule S. C. (1883), Ord. 58, r. 6.

Where one of several defendants appealed, and the plaintiff claimed relief over against the co-defendants who did not appeal, service of notice of appeal, under *J. A. s. 38*, on such co-defendants was held unnecessary, but it was held that they were sufficiently notified by being served with the respondent's reasons against the appeal, a copy of the printed appeal book, and notice of the hearing of the appeal: *Freed v. Orr*, 6 App. R. 690.

Where relief over claimed by respondent against defendants who do not appeal.

Under the English Rule a respondent was permitted to proceed with a cross appeal on a point in which the appellant had no interest: *Ralph v. Carrick*, 11 Chy. D. 873. But it was held a respondent cannot cross appeal simply on a question of costs: *Harris v. Aaron*, 4 Chy. D. 749, and see *J. A. s. 32*; *Rule S. C. 428*.

As to matter in which appellant not interested.

As to costs.

**17.** The reasons for and against the appeal shall contain a statement of the points of law intended to be argued, and the authorities relied upon.

Reasons for, and against, appeal, to contain points of law to be argued and authorities.

**Ord. 18** has been rescinded by *Ord. 67*, and the following substituted:

**18.** The appeal books shall be printed on paper of good quality, on one side of the paper only, and in demy-quarto form, with small pica type leaded; and every tenth line of each page shall be numbered in the margin, the numbering to be from the top of each page and not from the beginning of the book; and the size of the books shall be eleven inches in height, and eight and a half inches in width. An index to the pleadings, evidence, and other principal matters, shall be added. The opinions of the Judges of the Court

Appeal books, how to be printed



appealed from shall not be printed where the same have been already issued in the regular reports, but a reference to the same shall be given in the appeal books, and shall be sufficient. The style of the cause in the Court below shall be used and retained in the appeal book, and in every proceeding in this Court, the designation "appellant" or "respondent" being added, *e. g.*,

Between A. B. (*respondent*),  
and PLAINTIFF.  
C. D. (*appellant*),  
DEFENDANT.

See *Ord. 52, post*, which requires every appeal book to contain the date of the first proceeding, and the dates of the filing of all pleadings.

Registrar not to file case, when improperly printed.

**19.** The Registrar shall not file the case without the leave of a Judge, if the preceding Order has not been complied with.

And see *Ord. 52, post*.

Costs, when errors in press.

**20.** If the press has not been carefully corrected, the Court may disallow the costs of printing, or may decline to hear the appeal, and make such order as to postponement and payment of costs as may seem just.

Time for delivering appeal books.

**21.** The printed case, and the copies thereof for the use of the Court, shall be delivered to the Registrar, within thirty days after the allowance of the security, unless the time shall be extended by the Court of Appeal, or a Judge; and in the case of neglect or omission by the appellant to comply with this Rule, the respondent may apply to a Judge upon two days' notice to the appellant for an order dismissing the appeal as for want of prosecution, and the Judge may thereupon make such order as to dismissing the appeal, or otherwise, as may appear just.

Dismissal of appeal for non-delivery.

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The "security" referred to in this *Order* is for the costs of the appeal, and not the security required to be given in order to procure a stay of execution.

The full Court will not interfere with the discretion exercised by a single Judge under this *Order*: *O'Neill v. Travellers Insurance Co.*, 9 App. R. 54.

**22.** Appeals shall be entered by the Registrar upon the list for hearing at the next regular sittings of the Court, which shall commence at least eight days after the receipt by him of the printed copies; and the appellant shall serve the respondent, or such respondents as are directly affected by the appeal, with notice of hearing, at least seven days before the first day of such sittings; and he shall at the same time deliver to the respondent two printed books.

Appeals, how  
entered for hear-  
ing.

Notice of hear-  
ing.

Any person liable to be affected by the order of the Court of Appeal may appear even though not served, and costs may be awarded him: *Re New Callao*, 22 Ch. D. 484.

**23.** If, in the opinion of the Court, any parties not served ought to be notified, the Court may direct service to be made, and may postpone the hearing of the appeal for that purpose, upon such terms as may seem just.

Court may  
order parties not  
served to be  
notified.

**24.** If either party neglects to appear at the proper day to support, or resist, the appeal, the Court may hear the other party, and may give judgment without the intervention of the party so neglecting to appear, or may postpone the hearing upon payment of such costs as the Court shall direct.

Default of parties  
at hearing—effect  
of.

**25.** Interlocutory applications to the Court, or a Judge, shall be made by notice of motion supported by affidavit to be filed in the office of the Registrar before the notice of motion is served.

Interlocutory  
applications, now  
made.

Two clear days  
notice of motion  
to be given of  
interlocutory ap-  
plications

**26.** The notice of motion together with copies of the affidavits filed shall be served at least two clear days before the time of hearing; and in the computation of such two clear days, Sundays or any day on which the offices are closed is not to be reckoned.

Admissions of  
service need not  
be verified.

Affidavit of ser-  
vice not to be  
allowed.

**27.** Admissions of the service of a notice of motion upon the opposite Attorney, or Solicitor, need not be verified by affidavit; and in no case shall an affidavit of service be allowed upon taxation, unless it shall appear that the party served, shall, after a demand therefor, have refused to give an admission of such service.

Fees in appeal to  
be same as in  
Court appealed  
from.

**28.** The same fees and allowances shall be taxed in appeal by the Registrar, as are allowed for similar services in the Court from which the appeal is brought; and a reasonable sum not exceeding \$5 in any case may be allowed for correspondence during the progress of the appeal.

Costs in appeal are now taxed by one of the Taxing Officers of the Supreme Court: see *Rule S. C. 438*. In appeals from the Surrogate Courts, the costs in appeal are taxable according to the Surrogate Court tariff: *Regan v. Waters*, 10 P. R. 364.

The fee of \$5 referred to in this Order may be allowed in lieu of fees prescribed by the tariff of the Court appealed from. In County Court appeals the fee for correspondence is \$2: see *Ord. 51, post*.

Counsel fees.

**29.** In ordinary cases the Registrar shall not tax larger counsel fees than \$40 to the senior counsel, and, \$20 to the junior counsel; and in no case more than \$80 to the senior counsel and \$50 to the junior counsel.

Larger fees than those prescribed by this Rule may be taxed between solicitor and client: *Archer v. Severn*, 3. C. L. T., 602.

Two counsel fees  
not to be allowed  
except in cases  
of importance.

**30.** The Registrar shall not tax two counsel fees, except in cases of such difficulty or importance as to render the appearance of two counsel reasonably necessary and proper.

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## GENERAL ORDERS C. A.—31.

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**31.** Two clear days' notice shall be given to the unsuccessful party, or parties, of the time appointed by the Registrar for the settlement of the certificate, provided for by the 44th section of the Court of Appeal Act, and the taxation of costs.

Certificate of ap-  
peal - settlement  
of.

*R. S. O. c. 33, sec. 44* is as follows :—

"44 The decision of the Court of Appeal shall be certified by the Registrar of the Court of Appeal to the proper officer of the Court below, who shall thereupon make all proper and necessary entries thereof, and all subsequent proceedings may be taken thereupon, as if the decision had been given in the Court below."

Certificate of  
appeal.

Any party dissatisfied with the minutes of the certificate, may move to vary them : *General Share and Trust Co. v. Wetley*, 20 Ch D. 130, and see *ante* vol. i., p. 6.

Moving to vary  
minutes of certi-  
ficate.

When the certificate drawn up and issued, does not conform to the judgment of the Court, a motion may be made to amend it so as to make it conform thereto : *St. John v. Rykert*, 3 C. L. T. 119.

Or to amend  
same.

Formerly in Chancery it was considered necessary to make the certificate of the Court of Appeal an order of the Court of Chancery : *Weir v. Matheson*, 2 Chy. Ch. R., 10, and see 9, P. R. 203 (*note*) but that course is no longer necessary in any of the Divisions of the High Court, and the certificate may be entered in the judgment books of the proper Division of the High Court, and enforced as a judgment of that Court without further order : *St. John v. Rykert*, 3 C. L. T. 119 ; *Norval v. Canada Southern R. W. Co.*, 9 P. R. 347, per Wilson, C. J., *Freed v. Orr*, 9 P. R. 181 ; *Re McArthur v. Southwold*, 8 P. R. 27 ; but see order of Proudfoot, J., *Smith v. Goldie*, 7th Augst, 1883. In *Lowson v. Canada Farmers Insurance Co.*, 19 C. L. J. 293, the Court of Appeal suggest that the judgment of the Court of first instance when varied must be amended according to the judgment in appeal, and that when amended, process may issue thereon ; the inconveniences attending such a procedure are pointed out in 19 C. L. J. 302, *et seq.*

How acted on.

The mode of making the entry differs. In the Chancery Division the certificate of the Court of Appeal is entered in the judgment book, and a note referring thereto is made in the margin of the entry of the original judgment, or order, affected thereby. In the Common Pleas Division a new judgment is drawn up, entitled in that Division, reciting the previous judgment, the appeal, and the result thereof as certified, and then concluding with the words, "It is therefore considered that (*setting forth the substance of the judgment, as awarded by the Court of Appeal*). No settled practice appears to exist in the Queen's Bench Division on the point.

## INSOLVENCY APPEALS.

Sittings of Judge  
for insolvency  
appeal.

**32.** A Judge of the Court will sit on every Tuesday, except during Vacation, and the sittings of the Full Court, to hear appeals under the Insolvency Act.

As to Insolvency appeals, see Rob. & Jos. Dig. pp. 448-451.

Notice of insol-  
vency appeal.

**33.** The party desiring to appeal shall, within the eight days limited by the Act serve a notice upon the parties who may be affected by the result of the appeal, stating his intention to appeal, and upon giving such notice he shall be deemed to have adopted proceedings on the appeal in compliance with the Act.

Deposit required  
on appeal in  
insolvency.

**34.** The appellant shall within seven days from making the deposit or giving the security required by the 128th section of the Insolvency Act, set down the matter to be heard by filing with the Registrar, a *præcipe* for the hearing thereof on the next Tuesday on which a Judge shall sit under the preceding Order, being not less than seven days thereafter; and shall serve not less than seven days' notice upon the opposite party, stating the time for which the appeal has been entered to be heard, (adding "or as soon after as Counsel can be heard") together with the grounds of objection on which the appellant relies, as nearly as may be in the manner in which reasons of appeal are drawn in appeals brought up from the Superior Courts.

Petition unneces-  
sary.

**35.** It shall not be necessary to serve any petition, or any other notice than those hereinbefore provided.

Clerk, or assign-  
ee, to transmit  
documents.

**36.** The clerk, or assignee, or other officer, having the custody of the documents, papers, and proceedings, shall upon the request of any party interested in the appeal, and upon receiving a sufficient sum to defray postage, transmit the same to the Registrar for the use of the Court, and it shall not be necessary to prepare any case, when the appeal is to be heard by a single Judge, but the appellant shall, when setting the appeal

down to be heard, leave a copy of the notice of hearing with the Registrar, to be delivered to the Judge.

**37.** After the appeal has been disposed of, the Registrar shall at the request of any person interested, and upon receiving a sufficient sum to pay postage, return such papers to the officer from whom the same were received.

Documents to be retransmitted.

**38.** If the necessary papers have not been received by the Registrar, on or before Friday preceding the day named for the hearing, the appeal shall not be heard, unless the Judge otherwise orders.

Appeal not to be heard if documents not received.

**39.** The costs and fees mentioned in Table D in the Appendix, and no other or greater shall be allowed on taxation, or taken, or received by, any Solicitor, Attorney, Sheriff, or Officer, respectively, for any service rendered under the Insolvent Act; and the same shall be the costs, fees, and charges fixed and settled under, and in pursuance of, the 123 section of the said Act.

Costs of appeals in insolvency.

#### COUNTY COURT APPEALS.

County Court appeals are regulated by the provisions of *R. S. O.* c. 43, ss. 34-42, and 45 Vict. c. 6 (O.).

**Cases in which an Appeal lies from County Courts.**—An appeal lies from a County Court to the Court of Appeal, from the decision of the Judge upon points reserved, or upon any points of law arising upon the pleadings, or respecting the reception, or rejection, of evidence, or from the decision upon any motion for a nonsuit, or for a new trial, or in arrest of judgment, or for judgment *non obstante veredicto*: see *R. S. O.* c. 43, s. 35; and also from any decision of a County Court Judge under any of the powers given by *The Administration of Justice Act*; and from any decision or order of a Judge of a County Court sitting in Chambers, under the provisions of the law relating to the examination of debtors, attachment of debts, and proceedings against garnishees; and from every decision, or order, in any cause or matter disposing of any right, or claim, where such decision is in its nature final, and not merely interlocutory: see 45 Vict. c. 6, s. 4 (O.).

Cases in which appeals lie from County Courts.

Prior to 45 Vict. c. 6, there could be no appeal from the County Court in garnishee proceedings: *Sato v. Hubbard*, 6 App. R. 546.

Although the jurisdiction of the Court of Appeal is not excluded in appeals from the County Court, where a new trial has been granted, or refused, as a matter of discretion, still the Court will not readily interfere in such cases with the discretion exercised by the Judge appealed from: *Hunter v. Vanstone*, 6 App. R. 337; and see *Wilson v. Brown*, 7 App. R. 181; though it may do so, where the evidence strongly preponderates in favour of the appellant: *Campbell v. Prince*, 5 App. R. 330. So, also, where the Judge of the County Court finds in favour of the respondent on contradictory evidence, the Court of Appeal will not interfere, even though, if the matter had come before it in the first instance, it would have decided otherwise: *Rees v. McKeown*, 7 App. R. 521.

An appeal will lie upon an interpleader order: *Feehan v. Bank*, U. C., 10 C. P. 32. An appeal will lie from a decision under *The Partition Act* (R. S. O. c. 101), on a special case stated: *Re Shaver and Hart*, 31 U. C. Q. B. 603; and see *Furness v. Mitchell*, 3 App. R. 510.

Formerly there could be no appeal after judgment entered: *Murphy v. Northern R. W. Co.*, 13 C. P. 32; *Duffil v. Dickinson*, 14 C. P. 142; *Wood v. Grand Trunk R. W. Co.*, 16 C. P. 275; but an appeal may now be had from any appealable decision, notwithstanding judgment has been signed, provided that security be given within ten days from the decision appealed against, or within such further time, not exceeding thirty days, as the Judge of the County Court appealed from may allow; and in case the appeal is successful the Court may set aside, or vary, the judgment: see 45 Vict. c. 6, s. 4, (O.)

Cases in which  
appeal held not  
to lie from  
County Courts.

**Cases in which an appeal has been held not to lie.** No appeal lies from any decision of a Judge of a County Court in contested Municipal Election proceedings: *Regina ex rel., Grant v. Coleman*, 7 App. R. 619, but see 45 Vict. c. 6, s. 4 (O.) *supra*.

No appeal lies from any decision of a County Court Judge sitting in Chambers except in the cases specified in 45 Vict. c. 6, s. 4, (O.) *supra*, p. 763.

The order of a Judge on an application to amend was formerly held not appealable: *Branigan v. Stinson*, 10 U. C. Q. B. 403; and see *Anglin v. Municipality of Kingston*, 16 U. C. Q. B. 121; but see *Peterkin v. McFarlane*, 4 App. R. 25; and a decision upon a case by consent without pleadings, was formerly held not to be appealable: *Harding v. Knowlson*, 17 U. C. Q. B. 564, and when a verdict is entered by consent, subject to the opinion of the Judge upon the law and facts, no appeal will lie from his decision thereon: *McColl v. Waddell*, 19 C. P. 213; but see now 45 Vict. c. 6, s. 4 (O.) *supra*. No appeal lies from the ruling of the Judge as to the right to begin: *Hastings v. Earnest*, 7 U. C. Q. B. 520.

An appeal will not lie from the granting of a rule *nisi* before it has been made absolute, or discharged: *Robinson v. Richardson*, 32 U. C. Q. B. 344; but it seems that the rule absolute, or rule dis-

is not excluded trial has been the Court will not exercised by the R. 337; and see also so, where the appellant: *Campbell* of the County dictory evidence, though, if the matter have decided other-

*Feehan v. Bank*, decision under *The* and: *Re Shaver and* ell, 3 App. R. 510. ent entered: *Mur-* Dickinson, 14 C. P. 75: but an appeal withstanding judge given within ten such further time, ty Court appealed ful the Court may s. 4, (O.)

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rule nisi before it v. *Richardson*, 32 plute, or rule dis-

charging the rule nisi, need not be taken out before appeal: *Penton v. Grand Trunk R. W. Co.*, 28 U. C. Q. B. 367.

The Court formerly refused to entertain an appeal, where the decision turned wholly upon the evidence, and involved no point of law: *Fowler v. McDonald*, 3 U. C. Q. B. 385; *Bradley v. Crane*, 4 U. C. Q. B. 122; *Manning v. Ashall*, 23 U. C. Q. B. 302; *Clark v. Hurlburt*, 6 C. P. 438; *McKinstry v. Furby*, 24 U. C. Q. B. 176; *Harria v. Robinson*, 25 U. C. Q. B. 247. Nor where the Judge granted a new trial on the ground that he had not sufficiently directed the jury as to the law: *Somers v. Livingstone*, 24 U. C. Q. B. 64.

**Who May Appeal.**—Besides the actual parties to the cause, Who may persons suing or being sued in the name of others, though not men- appeal. tioned in the record, and persons on whose behalf, or for whose benefit any suit is prosecuted or defended, may appeal: see *R. S. O. c. 43, s. 34*.

**Time for Appealing.**—No time is expressly limited by the Statutes within which an appeal from a County Court must be lodged, Time for except in the case where judgment has been actually entered, in appealing. which case the security must be given within ten days from the decision appealed against, or within such further time, not exceeding thirty days, as the Judge appealed from may allow: see 45 *Vict. c. 6, s. 5* (O.)

All appeals, however, must be set down to be heard at the first sittings of the Court for the hearing of arguments which shall commence after the expiration of thirty days from the decision complained of: see *Ord. 40, infra*.

Sunday is not reckoned in the thirty days where it is the first day: *Cooper v. Dixon*, 3 C. L. T. 198.

**Security.**—Every appellant must give security for such sum as the Judge may direct, either by bond, or by payment into Court. Security to be given on appeals from County Courts.

If a bond be given it must be executed by two persons, whether named as sureties, or as parties interested or otherwise, and must be for such sum as the Judge of the Court appealed from directs, conditioned that the appellant shall abide by the decision of the cause by the Court of Appeal, and pay all sums of money and costs, as well of the suit as of the appeal, awarded and taxed to the opposite party: *R. S. O. c. 43, s. 37*. Condition of bond.

**Affidavits of justification** to the amount of the penalty of the bond, are to be made by the obligors, and annexed to the bond, and an affidavit of the due execution of the bond is also necessary. These affidavits should be entitled in the cause. The bond with these affidavits is then to be produced to Judge of the Court appealed from, to be approved by him, and, when approved, is to be filed in the office of the Court appealed from, until the opinion of the Court Affidavits of justification, and of execution of bond, to be filed.



of Appeal has been given, when it is to be delivered out to the successful party : *Ib.*, ss. 37, 38.

When the Judge refuses to certify the proceedings on the ground of an alleged insufficiency of the bond, the question as to its sufficiency may be tested by an application for a mandamus to compel the Judge to certify : *Regina v. Wells*, 17 U. C. Q. B. 545; *In re Keenahan v. Preston*, 21 U. C. Q. B. 461.

Objections to  
sufficiency of  
bond, how taken.

But when the Judge has allowed the bond and certified the proceedings to the Court of Appeal, the Court of Appeal will not refuse to hear the appeal, nor will it entertain an application to strike out : appeal on objections to the form, or amount, of the bond, or the sufficiency of the sureties, or on the ground that the bond was not filed in due time : *Penton v. Grand Trunk R. W. Co.*, 28 U. C. Q. B. 367; *McLellan v. McLellan*, 2 C. L. J. N. S. 297; *Haworth v. Fletcher*, 20 U. C. Q. B. 278, but see *Pentland v. Heath*, 24 U. C. Q. B. 464. Applications to set aside the bond must be made to the Judge of the County Court.

The appeal bond, conditioned as prescribed by the statute, is security both for the costs of the appeal, and also for the costs below : *Waddell v. Robertson*, 26 U. C. Q. B. 376.

Staying proceed-  
ings pending  
appeal.

**Staying Proceedings.**—Proceedings may be stayed for ten days to enable security to be given : *R. S. O. c. 43 s. 36*. The allowance of the security, is in practice regarded as a stay of further proceedings, but there appears to be no provision in the *Orders* or statutes, which makes the perfecting of security *ipso facto* a stay proceedings pending the appeal, though possibly in some cases respondent would find difficulty in enforcing his judgment, pending the appeal, owing to all the original papers being transmitted to the Court of Appeal under *Ord. 39a, infra*.

The Court appealed from would, however, have inherent jurisdiction, to make an order granting such stay pending the appeal : see *Cotton v. Corby*, 5 U. C. L. J. 67.

Original papers  
to be certified and  
transmitted in  
C. C. appeals.

(39 a). For the purpose of avoiding unnecessary expense in appeals from the County Courts—particularly in making copies of papers—it is ordered that the pleadings, motions, rules, orders, and other papers certified to the Court of Appeal under section 41 of the Act respecting County Courts, shall be the original papers filed in the County Court; and when the evidence has been taken by an official reporter, his transcript of the evidence used, or prepared for use, in the County Court upon the motion which is the subject of the appeal, shall be the evidence so certified.

The said papers, together with the Judge's charge, and his judgment or decision, and also the evidence when not taken by an official reporter, and all objections and exceptions to the evidence, shall be fastened together and transmitted with the Judge's certificate to the Registrar of the Court of Appeal, who is to return them to the County Court when the appeal is disposed of.

Papers—how to be transmitted, and returned

It shall not be necessary to certify or transmit the evidence, or the objections or exceptions thereto, in any case in which the appeal is from a judgment, or decision upon the pleadings, or upon any action not founded upon the evidence. (Wednesday, May 19th, 1880).

Evidence need not be certified, or transmitted, when decision appealed from is not founded thereon.

R. S. O. c. 43 s. 41, is as follows :

"41. Upon the bond being so approved, or such deposit being paid into Court, the Judge shall, at the request of the appellant, certify under his hand to the Court of Appeal, the pleadings in the cause, and all motions, rules, or orders, made, granted, or refused, therein, together with the Judge's charge, and the judgment or decision on the same, and, where a trial has been had, the evidence and all objections and exceptions thereto, and all other papers in the cause affecting the questions raised by the appeal."

This section, however, is modified by 45 Vict. c. 6, s. 6 (O.) which provides that the Judge shall only be required to certify such motions, rules, orders, affidavits, evidence, and other materials, as are necessary for the full understanding of the matter in appeal together with his judgment or decision on the same. It may be doubted, however, whether this modification of s. 13 applies except to appeals under 45 Vict. c. 6, ss. 4, 5.

**40.** An appeal shall be set down to be heard at the first sittings of the Court for the hearing of arguments, which shall commence after the expiration of thirty days from the decision complained of.

C. C. appeals when to be set down.

**41.** An appeal shall be set down for hearing, by delivering to the Registrar of the Court of Appeal, at least eight days before the sittings at which the appeal is to be heard, the certified copy of the pleadings, pro-

C. C. appeal how set down.

ceedings, evidence and other matters required by section 41 of chapter 43 of the Revised Statutes of Ontario, and ten appeal books for the use of the Judges of the Court of Appeal and the officers of the Court.

Appeal books,  
how printed.

**42.** The books shall be printed on paper of good quality, on one side of the paper only, in demy quarto form, with small pica leaded, and every tenth line of each page shall be numbered in the margin, and a statement of the reasons of appeal shall form a part thereof.

The appeal books are printed by the appellant without any previous settlement of the case. If the respondent is dissatisfied with the case as printed by the appellant he must apply to a Judge of the Court of Appeal in Chambers to set it aside, unless he merely complains of an omission, in which case he may, under *Ord. 48 post*, deliver a memorandum of such omitted matter to the Registrar.

Pleadings, how  
to be printed.

**43.** A full copy of the pleadings shall not be printed in the books, unless it be necessary for the proper consideration of the question raised upon the appeal, *ex. gr.* in questions arising on demurrer, or in arrest of judgment, or for judgment *non obstante veredicto*. In other cases it shall be sufficient to state the substance of the pleadings, in a brief form, in accordance with the example given in the Appendix, but so as to be intelligible. (Form C.)

See *post Ord. 52.*

Evidence not  
relevant to ap-  
peal, not to be  
printed, but  
charge, if any,  
and reasons for  
judgment, to be  
printed.

**44.** It shall not be necessary to print evidence which does not bear upon the question in appeal, but the books must always contain the opinion delivered by the Judge in Term, and his charge in case of a trial by a jury, and his note of judgment in case of a trial by himself.

Exhibits, how  
far to be printed.

**45.** Exhibits used at the trial shall not be printed in the books, unless their contents are material to the

question in appeal, and then only such parts as are material; if any instrument or document be unnecessarily printed, the expense thereof shall be disallowed on taxation.

**46.** All formal matters, such as copies of the motion papers, and rules discharging, or making rules *nisi* absolute, shall be omitted, but such reference shall be made to them including the dates thereof, as may appear necessary for giving a clear and intelligible statement of the case.

Formal proceedings not to be printed in extenso.

**47.** No costs shall be taxed, whether between party and party, or between attorney and client, for any matter appearing in the appeal books which was not reasonably necessary to raise the question in appeal.

Costs of unnecessary matter not to be allowed.

**48.** The appellant shall, at least six days before the sittings at which the appeal is to be heard, serve the respondent with the notice of the setting down of the appeal and with a copy of the printed appeal book, and of the grounds and reasons of his appeal. In case the respondent is of opinion that any necessary matter has been omitted, he may at any time before the hearing leave with the Registrar a memorandum briefly referring to such omitted matter.

Appeal book and notice of setting down, to be served on respondent six days before sittings.

Respondent may deliver memo. of matter omitted.

**49.** Service of all necessary notices may be made either upon the attorney, or upon his town agent, in the same manner as if the suit were in one of the Superior Courts.

Service of proceedings, how to be made.

**50.** If the foregoing Rules are not complied with, the appeal shall not be heard, unless the Court, or a Judge, shall, on application made upon two days' notice to the respondent, otherwise order.

Non-compliance with Rules, effect of.

## Costs of appeal.

**51.** The costs to be taxed, and allowed, upon appeals from County Courts, shall be on the same scale as formerly allowed upon appeals to the Courts of Queen's Bench or Common Pleas: And a sum not exceeding in any case \$2, may be allowed for correspondence during the progress of the appeal.

It would seem that the old tariff of costs of the Queen's Bench and Common Pleas, is still applicable to appeals from County Courts, and not the tariff recently prescribed by the Supreme Court. Where the appeal is from the Surrogate Court, the costs of appeal are taxable according to the tariff of the Surrogate Court: *Regan v. Waters*, 10 P. R. 364.

## Appeal books to contain dates of proceedings, &amp;c.

**52.** All books, as well in Superior Court, as County Court appeals, shall contain the date of the first proceeding in the suit or matter; and the dates of the filing of the several pleadings shall be stated at the commencement of the copy or summary thereof. In the event of non-compliance with this Rule, such books will not be received by the Registrar, nor will the appeal be heard.

## SITTINGS, VACATION, COMPUTATION OF TIME, &amp;c.

## Sittings of Court of Appeal.

**53.** There shall be five sittings in the year for the hearing of arguments, commencing on the second Tuesday in January, the first Tuesday in March, the second Tuesday in May, the first Tuesday in September, and the second Tuesday in November, or in case any of these days shall be a legal holiday, then on the following day.

## Extra sittings may be appointed.

**54.** In case of sittings at any other time being deemed necessary, or convenient, for the despatch of business, due notice of the time of holding the same will be given.

**Ords. 55, 56** prescribed the duration of the long vacation, and the Christmas vacation. These Orders are now superseded by Rule S. C. 532, *post*.

**57.** The time of either vacation shall not be reckoned in the computation of the time appointed, or allowed, by these Orders, for any act or proceeding, except in the case of County Court appeals.

Time of vacation not to be reckoned except in C. C. appeals.

**58.** The Court, or a Judge, shall have power to enlarge or abridge the time appointed by these Orders for doing any act or taking any proceeding, upon special application, and upon such terms as the justice of the case may require.

Time for taking proceedings, may be enlarged, or abridged.

**59.** In all cases in which any particular number of days, not stated to be clear days, is prescribed by these Orders, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless such day shall happen to fall on Sunday, or a legal holiday, or non-judicial day.

Time, how computed

This Order would seem to be superseded by *Rules S. C.* 456, 457.

**60.** In all cases expressed to be clear days, or where the term "at least" is added, both days shall be excluded.

**61.** In all matters, relating to services of notices, not specially provided for by these Orders, the practice of the Court appealed from shall be followed.

Practice of Court appealed from, to be followed when not varied by these Orders.

#### PAYMENT OF MONEY INTO, AND OUT OF, COURT.

*Ord.* 62-67, related to the payment of money into, and out of, the Court of Appeal, and are now obsolete, being superseded by the provisions of 48 Vic. c. 13, ss. 19, 20 (O.), which are as follows :

*Ord.* 62-67, obsolete.

s. 19. "All mortgages, stocks, funds, securities, and all estate therein, and all moneys and effects standing in the name of the Registrar of the Court of Appeal as such Registrar, in any cause, matter, or proceeding, now, or at any time heretofore, pending in the said Court of Appeal are hereby transferred to, and vested in, the Accountant of the Supreme Court of Judicature for Ontario as such Accountant, subject to the trusts which respectively attach thereto ; and the said Registrar and one of the Judges of the said Court of Appeal are to execute all cheques or documents necessary to effect a formal transfer thereof, if any are required ; and the Registrar is

Funds and securities in Court of Appeal, vested in Accountant of Supreme Court.

forthwith to deliver to the said Accountant all books of account and documents in his possession or control relating to the moneys and property hereby transferred to the said Accountant."

Moneys are to be paid into, and out of Court of Appeal, as moneys are paid in, and out of, the High Court.

s. 20. "Subject to any Rules of Court to be made under *The Ontario Judicature Act, 1881*, all moneys required to be paid into, or out of, the said Court of Appeal, under any order, judgment, statute, rule of Court or otherwise, shall be paid in, and paid out, in like manner as moneys are paid into, and out of, Court, in actions pending in the High Court.

As to the payment of money into Court: see *ante* vol. 1., pp. 183, 184. As to payment of money out of Court: see *Ib.* p. 184, *Rules S. C.* 477, 478.

67. The following Order shall be substituted for Order 18 of the Orders of 30th March, 1878:

[*This Order is printed supra as Order 18.*]

Amendment of Ord. 14.

68. The following is to be added to Order 14:— And also thirty copies for the purpose of being delivered, in the event of an appeal to the Supreme Court of Canada, to the party appealing to that Court for use upon such appeal.

Such additional thirty copies are not required to be deposited in cases of appeals from County Courts.

#### FORM A.

Know all men by these presents that we (*naming all the obligors with their places of residence and additions*), are jointly and severally held and firmly bound unto (*naming the obligees with their places of residence and additions*), in the penal sum of \_\_\_\_\_ dollars, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, our, and each of our heirs, executors, and administrators, respectively, firmly by these presents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Whereas (*the appellant*) complains that, in the giving of a certain judgment in a certain suit in Her Majesty's Court of

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Queen's Bench (or of Chancery or Common Pleas, as the case may be), in the Province of Ontario, between (naming the parties to the cause) manifest error hath intervened, wherefore (the appellant) desires to appeal from the said judgment to the Court of Appeal.

Now the condition of this obligation is such, that if (the appellant) do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed from shall, be affirmed or in part affirmed, then this obligation shall be void, otherwise to remain in full force.

Signed, sealed and delivered, in the presence of

---

### FORM B.

In the (style of Court).

A. B., Plaintiff,	}	I, E. F., of
v.		make oath and say, that I am a
C. D., Defendant.	}	resident inhabitant of Ontario, and
		am a householder in, (or a freeholder in ,) and that I
		am worth the sum of , (the sum mentioned as the
		penalty, or such sum as the deponent is bound in), over and
		above what will pay all my debt; and I, J. H., of ,
		make oath and say, that I am a resident inhabitant of Ontario,
		and am a householder in (or a freeholder in ,)
		and that I am worth the sum (as in the former case) of
		over and above what will pay all my debts.

The above named deponents,  
E. F. & J. H., were sworn,  
&c., the day of  
18 , before me.

Commissioner, &c.

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## FORM C.

Action commenced by writ dated 2nd January, 1878.

Declaration: *Filed the 16th January, 1878.*

1st Count,—Trespass to goods.

2nd “ —Common Counts.

Pleas. *Filed the 24th January, 1878.*

To 1st Count.

1. Not guilty.

2. Not possessed.

3. Leave and license.

To 2nd Count: *Nunquam indebitatus.*

*(Replication and other pleadings to be in a similar form but sufficiently full to be intelligible),*

## FORM D.

## TARIFF.

*Fees to Solicitor or Attorney, as between party and party, and also as between Solicitor and Client.*

Instructions for demand of assignment by debtor, or for compulsory liquidation, or for petition, where the Statute expressly requires a petition, or for brief, where matter is required to be argued by counsel, or is authorized by the Judge to be argued by counsel, or proceedings on appeal . . . . .	\$2 00
Instructions for other necessary proceedings . . . . .	1 00
Drawing and engrossing petitions, deeds, affidavits, notices, advertisements, pleadings, and all other necessary documents or papers, when not otherwise expressly provided for, per folio of 100 words, or under . . . . .	0 20
Making other copies when required . . . . .	0 10
When more than <i>five</i> copies are required of any notice or other paper, five only to be charged for, unless the notice or paper is printed, and in that case printer's bills to be allowed in lieu of copies).	

January, 1878.

1878.

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Drawing schedule, list or notice of liabilities, per folio, when number of creditors does not exceed twenty .....	0 20
When the number of creditors therein exceeds twenty, then for every folio of 100 words over twenty ....	0 10
Every common affidavit of service of papers, including attendance .....	0 50
Every common attendance .....	0 50
Every special attendance on Judge, or before assignee, or at meeting of creditors .....	2 00
For every hour after the first .....	1 00
(To be increased by the Judge at his discretion).	
Fee for settling special composition deed, or consent to discharge .....	2 00
Fee on writ of attachment against estate and effects of insolvent, including attendance .....	2 00
Fee on rule of Court, or special order of Judge (whether <i>nisi</i> or absolute) .....	1 00
Fee on <i>sub. ad test.</i> including attendance .....	1 00
Fee on <i>sub. duces tecum</i> including attendance .....	1 25
And if above four folios, then for each additional folio, over such four folios .....	0 10
Fee on every other writ .....	1 00
Every necessary letter .....	0 50
Cost of preparing claim of creditors, and procuring same to be sworn to, and allowed at meeting of creditors, in ordinary case, where no dispute ....	1 00
Preparing for publication, advertisements required by the Statute, including copies and all attendances in relation thereto .....	2 00
Preparing, engrossing, and procuring execution of bonds or other instruments of security .....	2 00
Actual travelling expenses, not exceeding in any case 10 cents per mile, actually travelled .....	
Actual disbursements for postages and other necessary expenses .....	
Bill of costs ; engrossing, including copy for taxation per folio .....	0 20

Copy for the opposite party.....	0 50
Taxation of costs.....	1 00

No allowance to be made for unnecessary documents or papers, or for unnecessary matter in necessary documents, or papers, or for unnecessary length of proceedings of any kind.

### COUNSEL.

Fee on arguments, examinations, and advising proceedings, to be allowed and fixed by the Judge as shall appear to him proper under the circumstances of the case.

### FEEES TO CLERK.

Every writ, or rule, or order.....	0 50
Filing every affidavit or proceeding.....	0 10
Swearing affidavit .....	0 20
Copies of all proceedings of which copy bespoken or required, per folio 100 words.....	0 10
Every certificate .....	0 50
Taxing costs.....	0 80
Fee for keeping record of proceedings in each case	1 00
Any search.....	1 00
A general search relating to one insolvency, or the insolvency of one person or firm.....	0 50
For every hearing in any case on applications for discharge, contestations or other special hearings, where the attendance of the Clerk is deemed necessary by the Judge, per hour .....	0 50

### SHERIFF.

Same as on corresponding proceedings in Superior Courts.

### WITNESSES.

Same as in Superior Courts.

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In case of any proceedings not provided for by this tariff, the charges to be the same as for like proceedings, according to the tariffs of the Superior Courts.

THOMAS MOSS, *C. J.*  
 GEO. W. BURTON, *J.*  
 C. S. PATTERSON, *J.*  
 JOS. C. MORRISON, *J.*

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### APPEALS TO HER MAJESTY IN PRIVY COUNCIL.

(*Orders of 8th September, 1871.*)

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**35.** That the security to be given in cases of appeal to Her Majesty in Privy Council, shall be personal, and by bond to the respondent or respondents, such bond to be executed by the appellant or appellants, or one or more of them, and by two sufficient sureties, (except in special cases, as mentioned in the foregoing Rule, number three, [*No. 4 of present Orders,*]) in the penal sum of two thousand dollars, the condition of which bond shall be to the effect that the appellant or appellants shall and will effectually prosecute his and their appeal, and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed, or in part affirmed; and in cases from Chancery, application to the Court of Appeal to stay proceedings shall be by motion and notice, which motion, if granted, shall be upon terms as to security, under the sixteenth section of the afore-said statute, chapter thirteen, or otherwise, as the circumstances or nature of the case may require.

Security to be  
 given on appeals  
 to Privy Council

rior Courts

Form of appeal  
bond.

**36.** That the bond referred to in the foregoing Rule, number twenty-nine, shall be in the following form:—

Know all men by these presents, that we (*naming all the obligors, with their places of residence and additions*), are jointly and severally held and firmly bound unto (*naming the obligees, with their places of residence and additions*), in the penal sum of two thousand dollars, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, our, and each of our heirs, executors, and administrators, respectively, firmly by these presents.

Witness our hands and seals respectively, the       day of  
in the year of our Lord, 18       .

Whereas (*the appellant*) alleges, that in the giving of judgment in a certain suit in Her Majesty's Court of Appeal, in Ontario, between (*the respondent*) and (*the appellant*), manifest error hath intervened, wherefore (*the appellant*) desires to appeal from the said judgment to Her Majesty, in Her Majesty's Privy Council.

Now the condition of this obligation is such, that if (*the appellant*) do and shall effectually prosecute such appeal, or pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed against shall be affirmed, or in part affirmed, then this obligation shall be void, otherwise shall remain in full force.

Affidavit of justification required from obligors.

**37.** That in every case of appeal to Her Majesty in Council, the obligors, parties to any bond as sureties, shall justify their sufficiency by affidavit in the manner and to the same effect as is required by the foregoing Rule number eight. [*No. 6 of present Orders.*]

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Her Majesty in  
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the foregoing  
*Orders.*]

## ORDERS OF THE PRIVY COUNCIL

PASSED

AT THE COURT AT BUCKINGHAM PALACE,  
THE 13TH OF JUNE, 1853.

*Present :*

THE QUEEN'S MOST EXCELLENT MAJESTY,

His Royal Highness Prince Albert.

Lord President,	Earl of Aberdeen,
Lord Steward,	Earl of Clarendon,
Duke of Newcastle,	Viscount Palmerston,
Duke of Wellington,	Mr. Herbert,
Lord Chamberlain,	Sir James Graham, Bt.

Whereas, there was this day read at the Board a report from the Right Honourable the Lords of the Judicial Committee of the Privy Council, dated the 30th May last past, humbly setting forth that the Lords of the Judicial Committee have taken into consideration the practice of the Committee with a view to greater economy, despatch, and efficiency in the appellate jurisdiction of Her Majesty in Council, and that their Lordships have agreed humbly to report to Her Majesty that it is expedient that certain changes should be made in the existing practice in appeals, and recommending that certain Rules and Regulations therein set forth should henceforth be observed, obeyed, and carried into execution, provided Her Majesty is pleased to approve the same :

Her Majesty, having taken the said Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and of the Rules and Regulations set forth therein, in the words following, videlicet:—

Appellant, when successful, may recover costs of appeal.

**I.** That, any former usage or practice of Her Majesty's Privy Council notwithstanding, an appellant who shall succeed in obtaining a reversal, or material alteration, of any judgment, decree, or order, appealed from, shall be entitled to recover the costs of the appeal from the Respondent, except in cases in which the Lords of the Judicial Committee may think otherwise to direct.

Transcripts to be sent to the Registrar of the Privy Council.

**II.** That the Registrar or other proper officer having the custody of the records in any Court, or special jurisdiction from which an appeal is brought to Her Majesty in Council, be directed to send by post with all possible despatch, one certified copy of the transcript record in each cause to the Registrar of Her Majesty's Privy Council, Whitehall; and that all such transcripts be registered in the Privy Council office, with the date of their arrival, the names of the parties, and the date of the sentence appealed from; and that such transcript be accompanied by a correct and complete index of all the papers, documents and exhibits in the cause; and that the Registrar of the Court appealed from, or other proper officer of such Court, be directed to omit from such transcript all merely formal documents, provided such omission be stated and certified in the said index of papers; and that special care be taken not to allow any document to be set forth more than once in such transcript; and that no other certified copy of the record be transmitted to agents in England or on behalf of the parties in the suit; and that the fees and expenses incurred and paid for the preparation of such transcript be stated and certified upon it by the Registrar, or other officer, preparing the same.

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**III.** That where the record of proceedings or evi-  
dence in the cause appealed has been printed or partly  
printed abroad, the Registrar or other proper officer of  
the Court from which the appeal is brought shall be  
bound to send home the same in a printed form, either  
wholly or so far as the same may have been printed,  
and that he do certify the same to be correct, on two  
copies, by signing his name on every printed sheet, and  
by affixing the seal, if any, of the Court appealed from  
to these copies, with the sanction of the Court.

Transcripts may  
be printed  
abroad

And that in all cases in which the parties in appeals  
shall think fit to have the proceedings printed abroad,  
they shall be at liberty to do so, provided they cause  
fifty copies of the same to be printed in folio, and  
transmitted, at their expense, to the Registrar of the  
Privy Council, two of which printed copies shall be  
certified as above by the officers of the Court appealed  
from; and in this case no further expense for copying  
or printing the record will be incurred or allowed in  
England.

**IV.** That on the arrival of a written transcript of  
appeal as the Privy Council office, Whitehall, the  
appellant or the agent of the appellant prosecuting the  
same shall be at liberty to call on the Registrar of the  
Privy Council to cause it, or such part thereof as may  
be necessary for the hearing of the case, and likewise  
all such parts thereof as the respondent or his agent  
may require to be printed by Her Majesty's Printer,  
or by any other printer on the same terms, the appel-  
lant or his agent engaging to pay the cost of preparing  
a copy for the printer at a rate not exceeding one  
shilling per brief sheet, and likewise the cost of pre-  
paring such record or appendix, and that one hundred  
copies of the same be struck off, whereof thirty copies  
are to be delivered to the agents on each side, and

Written tran-  
scripts to be  
printed by Her  
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forty kept for the use of the Judicial Committee ; and that no other fees for solicitors' copies of the transcript, or for drawing the joint appendix, be henceforth allowed, the solicitors on both sides being allowed to have access to the original papers at the Council office, and to extract or cause to be extracted and copied such parts thereof as are necessary for the preparation of the petition of appeal, at the stationer's charge not exceeding one shilling per sheet.

Transcripts to be printed within a certain time.

**V.** That a certain time be fixed within which it shall be the duty of the appellant or his agent to make such application for the printing of the transcript, and that such time be within the space of six calendar months from the arrival of the transcript and registration thereof in all matters brought by appeal from Her Majesty's Colonies and plantations east of the Cape of Good Hope, or from the territories of the East India Company, and within the space of three months in all matters brought by appeal from any other part of Her Majesty's Dominions abroad; and that in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively, the appeal shall stand dismissed without further order, and that a report of the same be made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next sitting.

Appeals may be heard in the form of a special case.

**VI.** That wherever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Lords of the Judicial Committee in the form of a special case, and print such parts only of the transcript as may be necessary for the discussion of the same ; provided that nothing

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herein contained, shall in any way bar or prevent the Lords of the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit; and that in order to promote such arrangements and simplification of the matter in dispute, the Registrar of the Privy Council may call the agents of the parties before him, and having heard them and examined the transcript, may report to the Committee as to the nature of the proceedings.

And Her Majesty is further pleased to order, and it is hereby ordered, that the foregoing Rules and Regulations be punctually observed, obeyed, and carried into execution, in all appeals or petitions, and complaints in the nature of appeals, brought to Her Majesty or to Her heirs or successors, in Council from Her Majesty's Colonies and plantations abroad, and from the Channel Islands, or the Isle of Man, and from the territories of the East India Company, whether the same be from Courts of Justice, or from special jurisdictions, other than appeals from Her Majesty's Courts of Vice-Admiralty, to which the said Rules are not to be applied.

Whereof the Judges and Officers of Her Majesty's Courts of Justice abroad, and the Judges and officers of the Superior Courts of the East India Company, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. L. BATHURST.

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AT THE COURT AT BUCKINGHAM PALACE,  
THE 31ST DAY OF MARCH, 1855.

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*Present :*

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

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Judicial Com-  
mittee may relax  
Rules.

Whereas doubts have arisen with reference to the power of the Judicial Committee of the Privy Council to suspend or relax, under certain special circumstances, the regulations in appeal causes established by Her Majesty's Order in Council of the 13th June, 1853: Her Majesty by and with the advice of Her Privy Council, is pleased to order, and it is hereby ordered, that in appeal cases in which a petition of appeal to Her Majesty shall have been lodged, and referred by Her Majesty to the Judicial Committee, the said regulations shall be subject to any order or direction which, in the opinion of the Lords of the Judicial Committee, the justice of any particular case may seem to require.

C. C. GREVILLE.

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C. GREVILLE.

# APPENDIX

CONTAINING THE

RULES OF THE HIGH COURT OF JUSTICE,

AND THE

ADDITIONAL RULES OF THE SUPREME COURT  
OF JUDICATURE FOR ONTARIO,

PASSED SINCE THE 21<sup>ST</sup> AUGUST, 1881,

AND THE

TARIFFS OF COSTS

OF THE

HIGH COURT OF JUSTICE,

AND

THE COUNTY COURTS.

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RULES OF THE HIGH COURT OF JUSTICE.

(PASSED 22<sup>ND</sup> AUGUST, 1881).

**I**—It is ordered by the Judges of the High Court that one of the Judges of the Queen's Bench Division, or of the Common Pleas Division, shall sit in open Court, in Osgoode Hall, every week, excepting during the long vacation, and except during the period from the 24th day of December to the 6th day of January, both days inclusive, for the purpose of disposing of all Court business in the said Divisions which may be transacted by a single Judge.

*Weekly sittings  
of Judge in Court  
in Q. B. & C. P.  
Divisions.*

**II**—Such sittings shall be held on Tuesday and Friday of each week, and on such other days as the Judge holding such sittings may direct.

Weekly sittings  
of Judge in Court  
in Chy. Division.

**III.**—One of the Judges of the Chancery Division of the said High Court shall sit in open Court, in Osgoode Hall, every week, except during the long vacation, and except during the period from the 24th day of December to the 6th day of January, both inclusive, for the purpose of disposing of all business of the said Division which may be transacted by a single Judge.

Order of business

**IV.**—The business before the said Judge shall be taken, as nearly as may be provided, by the General Orders of the Court of Chancery.

Demurrers and  
special cases to  
be set down, and  
notice given.

**V.**—Demurrers and special cases shall be set down to be heard, and notice thereof given to the opposite party, six days before the day on which they are to be heard.

Copy of demurrer  
book or case to  
be left for Judge.

**VI.**—A copy of the demurrer book, or of the special case, shall be left with the Registrar of the Division in which the action is pending, for the use of the Judge before whom such demurrer, or special case, is to be heard, two days before the day appointed for the hearing.

Rules and orders  
*nisi* to be four  
day rules.

**VII.**—All rules, or orders *nisi*, directed to be issued by the Judge shall be four-day rules, and shall be set down to be heard at the first sittings of the Judge in open Court, for argument, after the same are returnable unless otherwise ordered by the said Judge.

Name of Judge  
to be stated in  
judgments and  
orders.

**VIII.**—The proceedings before a Judge sitting as aforesaid shall show on their face, in any judgment, decree, rule, or order, to be given, or made, that the business was carried on before a single Judge, as follows:—"In the High Court of Justice for Ontario. Before the Hon. Mr. Justice——[*naming the Judge*]."

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**IX.** It is ordered that the Divisional Courts of the High Court do meet on Tuesday the twenty-third day of August, instant at 11 o'clock a.m.

Sittings of Divisional Courts on 23rd Aug., 1881.

25th August, 1881.

**X.** All mortgages, stocks, funds, annuities, and securities, and all interest and estate therein, and all moneys and effects standing in the name of the Accountant of the Court of Chancery, or the Referee in Chambers, or any other officer named by the Court of Chancery, or in the name of the Clerk of the Crown and Pleas of the Court of Queen's Bench, or the Clerk of the Crown and Pleas of the Common Pleas, on the twenty-first day of August, A.D., 1881, be, and the same are hereby transferred to, and vested in, the Accountant of the Supreme Court as such Accountant, subject to the same trusts as respectively attached thereto. And the same officers are to execute all necessary cheques, or documents, to effect a formal transfer thereof.

Mortgages, stocks, &c., vested in Accountant of Supreme Court.

#### ADDITIONAL RULES OF THE SUPREME COURT OF JUDICATURE FOR ONTARIO.

25th August, 1881.

**495.** These Rules may be cited as the Rules of the Supreme Court of Ontario 1881, or each separate Rule may be cited as if it had been one of the Rules of the Supreme Court and had been numbered by the number of the Rule mentioned in the margin.

Rules, how cited.

**496.** In Rule 45, sub-section (d) the word "Act" is hereby substituted for the word "action" in the first line thereof.

Rule 45 s.s. (d) amended.

Rule 74 s.s. (a)  
amended.

**497.** In Rule 74, sub-section (a) the word "satisfied" is hereby substituted for the word "notified" in the third line thereof.

Rule 246 s.s. (a)  
amended.

**498.** In Rule 246 sub-section (a) the word "produced" is hereby substituted for the word "prove" in the third line thereof.

Rule 352 s.s. (b)  
amended.

**499.** In Rule 352, sub-section (b) the word "periods" is hereby substituted for the word "period" in the fourth line of the said sub-section.

Rule 376  
amended.

**500.** In Rule 376 the word "proceeding" is substituted for the word "proceedings" in the fourth line thereof.

Rule 100  
amended.

**501.** Rule 100 is hereby amended by inserting after the word summons in the fourth line thereof the words "or on notice as the case requires."

Rule 78 amended.

**502.** Rule 78 is amended by adding after the word "behalf" in the last line the words "in which the reference when required by the practice, shall be to the Master, or Local Master."

5th September, 1881.

No fee for seal  
when impressed  
on documents  
not formerly re-  
quiring to be  
sealed.

**503.** Where a seal is under the 57th section of the Judicature Act, impressed on any document which before the passing of the said Act did not require to be sealed, the fee of fifty cents mentioned in the 53rd section of "*The Superior Courts of Law Act*," R. S. O. ch. 39, shall not be payable on such document.

3rd January, 1882.

Orders dispensing  
with payment  
into Court, to be  
left with  
Accountant.

**504.** Copies of orders dispensing with payment of money into Court are, in all cases, to be left with the Accountant forthwith, after entry thereof.

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The copy must be properly authenticated by the proper officer. When an order is made dispensing with payment into Court, the order should direct how the fund of which payment is dispensed with, is to be debited.

**505.** Where infants are concerned, no order dispensing with payment of money into Court is to be made without notice to the guardian *ad litem* of the infants.

Guardian to be notified before order made dispensing with payment into Court of money in which infants are interested.

Notice is required to be given to, or the consent produced of, all parties entitled to share in the fund of which payment into Court is sought to be dispensed with. The direction to pay money into Court is made for the protection of the suitor, and it was formerly not usual to dispense with the payment into Court merely on the consent of the solicitors.

**506.** No conveyance of the lands of infants is to be settled, until evidence is produced to the officer settling the same of the purchase money having been paid into Court, or of the payment thereof into Court having been dispensed with; and in cases where there is to be a mortgage for part of the purchase money, until evidence is given to the said officer of such mortgage having been registered and deposited with the Accountant.

Conveyances of infants' lands—evidence to be produced to officer settling.

The proper evidence of the payment of money into Court, or of the deposit of a mortgage with the Accountant, is the production of the certificate of the Accountant, or of the chief clerk in his office, certifying the fact.

**507.** It shall be the duty of the Official Guardian to see that moneys payable on mortgages held by the Accountant, in which persons for whom the said Guardian has acted are interested, are promptly paid, and that the mortgaged premises are kept properly insured, and that the taxes thereon are duly paid.

Official Guardian to see to payment of mortgages in which moneys of parties for whom he has acted are invested.

28th January, 1892.

**Rule 508.**—Related to Judgments entered by local officers, and was rescinded by *Rule S. C. 517, post.*

Rule 508 rescinded.



Entry of orders  
by local officers.

**509.** All orders issued by a local officer which require to be entered, shall be entered at the office of such local officer only. (See *Rule S. C. 418.*)

Appeal to Divisional Court,  
from decision of  
a Judge, in what  
cases allowed.

**510.** In view of the state of business in the several Courts, and of doubts that have arisen upon the construction of Rules 316 and 317, it is ordered that where, at, or after, the trial of an action by a jury, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and to enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be wrongly entered, with reference to the finding of the jury upon the question, or questions, submitted to them. Where at, or after, the trial of an action before a Judge, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment, and to enter any other judgment, upon the ground that the judgment so directed is wrong, and such application may in either of the above cases be to a Divisional Court of the High Court, or to the Court of Appeal, and this Rule is to be substituted for Rules 316 and 317.

Rules 316, 317  
reincorporated.

This order was passed in consequence of the decision in *Trude v. Phenix*, 29 Gr. 426; 18 C. L. J. 54, where it was held that there was no appeal to a Divisional Court from the judgment of a Judge given at the trial of an action, except where the Judge had found certain facts, and the appellant admitted the correctness of the finding of the facts, but merely disputed the correctness of the judgment pronounced thereon. Under the present *Rule* an appeal to the Divisional Court may be had from any decision of a single Judge pronounced at a trial; but not when sitting otherwise in Court: *Re Galerno*, 46 U. C. Q. B. 379; *Wansley v. Smallwood*, 10 P. R. 233. An appeal to a Divisional Court from a judge sitting in Chambers may be had under *Rule S. C. 471*, but see *Holmsted's Manual*, Pr. 7.

Costs in actions  
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**511.** In every case in which judgment is entered without trial, or the decision of a Court or Judge, or

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order as to the costs, and where the amount of judgment, *prima facie*, appears to be within the jurisdiction of an inferior Court, the taxing officer shall not tax full costs of the High Court, without proof on affidavit to his satisfaction that the suit was properly instituted therein; and if properly within the jurisdiction of the County, or Division Courts, then the taxation shall be on the scale of fees in such Courts, subject to revision as in other cases.

Courts when  
judgment en-  
tered without  
trial, how to be  
taxed.

As to actions within the former jurisdiction of the County Courts see *Rule S. C. 515 post*. Where the cause of action is within the jurisdiction of a Division Court, only Division Court costs can be allowed, and the defendant is entitled to set off his High Court costs: *White v. Belfry*, 10 P. R. 64.

**512.** In case of trial by jury, and the Judge or Court makes no order respecting the costs, under Rule 428, the taxation of costs shall be under such scale of allowance only, as would have been applicable before the passing of the Judicature Act; and the event shall in such case be to recover costs according to such scale, subject to such rights of set off as to costs, as apply under the Common Law Procedure Act.

Costs, how taxed  
when case tried  
by jury.

Under *Rule S. C. 428* in all cases tried by a jury the costs are "to follow the event" unless the Judge otherwise orders. Under this *Rule* although the Judge may not have deprived the plaintiff of costs, he will only be entitled to recover costs on the scale applicable before the passing of *The Judicature Act*, and that subject to the defendant's rights to set off his costs: see C. L. P. Act, (*R. S. O. c. 50*) ss. 345, 348.

**513.** Discovery may be obtained by either party under Rule 222 after the defence is delivered, and by the plaintiff, after the time for delivering the defence has expired.

Discovery, time  
for obtaining.

*Rule, S. C. 222*, is as follows: "Any party may, after the close of the pleadings, (or when the application is on behalf of a plaintiff, after the time for delivering the defence of any party to the action has expired) obtain an order of course upon *præcipe*, direct-

ing the adverse party, within ten days after the service thereof, to make discovery on oath of the documents which are, or have been, in his possession or power, relating to any matters in question in the action, and to produce and deposit the same with the proper officer, for the usual purposes, and such party shall make discovery, and produce and deposit the documents accordingly, without further notice.

Rule 462 applied  
to all Rules re-  
lating to time.

**514.** Rule 462 shall apply to all Rules relating to time.

*Rule S. C. 462 is as follows: "A Court or a Judge shall have power to enlarge, or abridge, the time appointed by these Rules, or fixed by any order enlarging time, for doing any act, or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed, or allowed."*

Costs in actions  
within former  
equity jurisdic-  
tion of County  
Courts, how to  
be taxed.

**515.** In all actions which (before the passing of the Ontario Judicature Act, 1881, and the Law Reform Act of 1868) might have been brought under the equity jurisdiction of the County Court, and which are now carried on in the High Court of Justice, such fees and disbursements may be charged as are fixed by the lower tariff referred to in Order 553 of the General Orders of the Court of Chancery, and for all fees and disbursements not provided for in the said lower tariff, may be charged the amounts allowed in like cases, by the tariff of the 10th September, 1881, subject, however, to the same proportion of reduction as exists between the said lower tariff and the higher tariff of the Court of Chancery.

See note to *Chy. Ord. 553, ante* vol. 1, p. 332.

Rule 419 in part  
rescinded.

**516.** So much of Rule 419, as applies to sec. 302, of the Common Law Procedure Act, is hereby rescinded, and judgments of the High Court of Justice, shall not be minuted and docketed, as required by said sec. 302.

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**517.** Rule 508 is hereby rescinded, and the following substituted therefor:—

Rule 508  
rescinded.

It shall not be necessary for any Deputy Clerk of the Crown, Deputy Registrar, or Local Registrar, to transmit to the Registrars of the several Divisions of the High Court at Toronto, the original roll, and the papers of, or belonging to, the same, pursuant to sec. 303 of the Common Law Procedure Act, and Rule 419 of the Judicature Act; but instead thereof, every Deputy Clerk of the Crown, Deputy Registrar, and Local Registrar, shall once in every three months transmit to the Registrar of each Division at Toronto, a list, in the form hereinafter mentioned, of all judgments which have been entered by him in such Division during such period, and from the said lists the Registrars of the several Divisions shall prepare, and from time to time keep up, a general index or list of judgments, which shall be open to inspection by all persons interested, upon payment of the usual fee.

Original judgment rolls not to be sent from local offices to Toronto.

List of judgments entered in outer offices to be forwarded to head office of Division in Toronto.

#### FORM.

List of judgments entered in the office of the Deputy Clerk of the Crown (*or* Deputy Registrar *or* Local Registrar, *as the case may be*) of the County of \_\_\_\_\_ during the three months ending the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Form of list of judgments.

- (1) Plaintiff \_\_\_\_\_ Defendant.
- (2) Date of entry of judgment.
- (3) The amount recovered, or other relief given, exclusive of costs.
- (4) The amount of costs taxed.

**518.** Rule 114 is to extend to proceedings in the Master's office, and the Master is to have the same power as the Judge.

Rule 114 extended to Master's office.

*Rule S. C. 114* is as follows:—In any cause, or matter, for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Judge, be entitled to appear either in Court or Chambers on the claim of any person, not a party to the cause, against the estate of the deceased in respect of any debt or liability. The Judge may direct any other party to the cause to appear, either in addition to, or in the place of, the executor or administrator, upon such terms as to costs and otherwise as he shall think fit.

Bonds, &c., to be taken in name of Accountant, when not otherwise directed.

**519.** Every bond or recognizance required by the practice of the Court, for the purpose of security, is, unless otherwise ordered, to be taken in the name of the Accountant of the Supreme Court, his executors, administrators, or assigns.

This *Rule* only applies to bonds or recognizances as to which there is no other express provision in the *Rules*; it does not therefore apply to bonds for security for costs, which are to be made to the party requiring the security: see *Rule S. C. 430*. It applies to bonds to be given by committees of lunatics, and receivers, &c.

Judgment may be obtained in mortgage actions on *precipe* for default of defence

**520.** Where the action is in respect of a mortgage, and the plaintiff claims foreclosure, or sale, or redemption, and an appearance has been entered, but default has been made in delivering a defence or demurrer, the plaintiff shall be entitled to a judgment or order on *precipe*, as provided in *Rule 78*.

This *Rule* was passed to supply a supposed omission in *Rule S. C. 78*, which was supposed to enable a judgment for foreclosure, sale, or redemption, to be awarded on *precipe* only in default of appearance: see, however, *Trust and Loan Co v. McCarthy*, 19 C. L. J. 188, from which it would appear that, even before this *Rule*, such judgments could be awarded on *precipe* in default of defence, by analogy to the former practice in Chancery.

Toronto General Trusts Co. empowered to make investments of funds in Court.

**521.** Whereas, by the Act 35 Victoria, chapter 83, (Ontario), the Toronto General Trusts Company was Incorporated, and thereby empowered to act as agents for the transaction of business as therein mentioned. And whereas by the Act 45 Victoria chapter 17, the said Company may be accepted by the High Court of

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Justice as a Trust Company for the purposes of the said Court, in case the Lieutenant-Governor in Council shall approve, thereof as therein set forth. And whereas the said Company has been so approved of by the Lieutenant-Governor in Council, by Order dated the 10th day of March, 1882. And whereas the expenses of the Accountant's office have been by the Ontario Judicature Act of 1881, declared to be a first charge upon the income arising from the funds in Court, and it is not desirable to reduce the interest payable to suitors to a less rate than four per cent., and it is necessary to procure the investment of moneys in Court in order to raise a sufficient income to keep up this rate, and provide for the expenses of the Accountant's office. Therefore, *It is ordered*, that the Judges of the Chancery Division may arrange with the said Company to make investments, and to take the securities in the name of the Accountant of the Supreme Court of Judicature, of moneys in Court, upon first mortgages of lands, and may direct the issue of cheques therefor upon condition that the said Company do, by proper instrument, guarantee the sufficiency of such securities, and the due payment of interest at the rate of  $4\frac{1}{2}$  per cent. per annum, half yearly, on the moneys so invested from the date of the receipt by the Company of the money for each investment, and also the due repayment of the principal moneys so invested; and upon further condition that in case the said Company makes an investment as aforesaid at a higher rate than 6 per cent., then the said Company is to pay interest thereon to the Court at the rate of  $4\frac{3}{4}$  per cent.; and upon further condition that the said Company is to satisfy the Official Guardian of the said High Court of the sufficiency of the security as to value, and who is to certify the same to the Court before the cheque issues for each investment.

Appeals, &c., to be brought before Chancery Divisional Court, to be set down seven days before sittings, and seven days' notice given.

**522.** All appeals, proceedings, and matters, to be brought before the Divisional Court of the Chancery Division, are to be entered with the Clerk of Records and Writs, at least seven days before the day fixed for the sittings of the Court, and seven days' notice thereof is to be served upon the parties entitled to notice.

All applications for new trials in actions which have been tried by a jury, must be by order *nisi*: *Rules S. C.*, 308, 525, whether an application for an order *nisi*, which was formerly an *ex parte* application, must be set down, and notice served, is doubtful. It would be safe to do so.

Application to Divisional Court Chy. Div., when to be made.

**523.** An application to the Divisional Court of the Chancery Division, to change, or reverse, any judgment, shall be made at the first sittings of the Divisional Court, which begins not less than ten days after the pronouncing of the said judgment.

In the Queen's Bench, and Common Pleas, Divisions, motions for new trials, or to vary, or set aside, judgments, must be made within the first four days of the sittings: see *Rule S. C.*, 527 *post*. no such limitation however prevails in the Chancery Division.

Sittings of Divisional Court in Chy. Div.

**524.** After the sittings in June next of the Chancery Divisional Court, the said Divisional Court will hold sittings on the first Thursday in September, the first Thursday in December, and the third Thursday in February in each year.

The sittings of the Divisional Courts of the Queen's Bench, and Common Pleas, Divisions, are regulated by *Rule S. C.* 480.

Rule 308 amended.

**525.** Rule 308 is hereby amended by substituting the words "four days, both days inclusive, from the service of the order," for the words "eight days from the date of the order," in the third line of the said Rule.

Motion for new trial where case tried by a jury.

*Rule S. C.* 308 as amended by this *Rule* now reads as follows:—"The application for a new trial shall be by motion calling on the opposite party to shew cause at the expiration of four days, both inclusive, from the service of the order, or so soon thereafter as the case can be heard, why a new trial should not be directed."

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**526.** Rules 309 and 310 are hereby rescinded.

Rules 309 and 310  
rescinded.

**527.** In the Queen's Bench, and Common Pleas, Di-  
visions, all applications under Rules 307 and 308, and  
under Rule 510, when made to a Divisional Court, shall  
be made within the first four days of the sittings of  
the Divisional Court for hearing such applications,  
which may take place after the trial, or judgment,  
complained of.

Applications to  
Q. B. & C. P.  
Divisional Courts,  
for new trial,  
when to be made.

(a) In case the decision of a question raised at the  
trial, or the judgment, is reserved, and is not given  
until the Sittings aforesaid, or in case of a trial during  
the Sittings of the Divisional Court, any motion, or  
application, respecting the same, shall be made within  
six days after the day on which the verdict, or judg-  
ment is given, if so many days expire in such Sittings,  
and if not, then within the first four days of the ensuing  
Sittings.

(b) In cases tried by a jury, judgment shall not be  
signed until the time for making such motion or  
application as aforesaid has expired, unless the Judge  
shall certify under his hand, that in his opinion execu-  
tion ought to issue in such action forthwith, or at some  
day to be named in such certificate, and subject or not  
to any condition, or qualification.

Where case tried  
by jury, judg-  
ment not to be  
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for new trial has  
expired, unless  
otherwise  
ordered.

Rule S. C. 307 provides that when there has been a trial by a jury,  
any application for a new trial shall be to a Divisional Court.

When an action is tried by a Judge alone, the judgment may be  
entered at once, and enforced by execution, unless stayed by the  
Judge. See Rules S. C. 273, 326, 352.

Secus, when  
tried by a Judge.

**528.** It shall be sufficient if the notice of any appli-  
cation under Rule 510, is served within the time here-  
inbefore limited for making the same, provided that  
the day named in such notice for hearing the motion  
is not more than two clear days from the last day of

Application to  
Divisional Court  
under Rule 510,  
time for making



the time so limited, and falls within the Sittings of the Divisional Court in which such notice is given, otherwise such notice may be given for the first day of the following Sittings.

This *Rule* would seem to be confined to actions in the Queen's Bench, and Common Pleas, Divisions, the words "hereinbefore limited" are probably intended to apply to *Rule S.C.*, 527; as to proceedings in the Chancery Division: see *Rule S. C.* 522, 523, *ante*.

Order nisi may be filed by party obtaining same.

**529.** The party who obtains any order *nisi*, or who serves any notice of motion may, on or after the fourth day inclusive after the serving such order *nisi*, or notice file the same, together with an affidavit or admission of service, with the Registrar of the Divisional Court.

This *Rule* would seem to extend to actions in all the Divisions of the High Court.

Or by party served therewith.

**530.** The party served with any such order *nisi* or notice of motion may (if the same has not been already filed by the party who obtained or served the same) on or after the fifth day, both days inclusive, after the granting of the order, or service of the notice, file the same, together with an affidavit of the fact and time of such service, with the said Registrar.

This *Rule* would seem to extend to actions in all the Divisions of the High Court.

If order nisi not served ne recipiatur may be entered.

**531.** In case the party to whom such order *nisi* is granted shall neglect or delay to draw up and serve the same, the opposite party may, on or after the third day after granting such order, and upon filing with the Registrar an affidavit that the order has not been served, enter a *ne recipiatur* with such Registrar, after which the Registrar shall not receive or enter such order; and such order shall be deemed to be abandoned, and the opposite party may proceed as if no such order had been moved for or granted, unless the Divisional Court shall otherwise direct.

This Rule would seem to apply to actions in all the Divisions of the High Court.

**532.** In pursuance of the powers conferred upon them by the 20th section of the Judicature Act of Ontario, 1881, the council of Judges of the Supreme Court of Judicature for Ontario recommend that the following orders regulating the Vacations to be observed by the High Court of Justice, and the Court of Appeal, shall be made by the Lieutenant-Governor in Council pursuant to the said Act:

Time for vacations in the High Court of Justice, and Court of Appeal.

The Long Vacation is to commence on the 1st day of July, and to terminate on the 1st day of September in each year.

(1) The Christmas Vacation is to commence on the 24th day of December in each year, and to terminate on the 6th day of the following January.

(2) The days of the commencement and termination of each vacation shall be included in and reckoned part of the Vacation.

See order in Council of 22nd June, 1882, *Ontario Gazette*, vol. 15, p. 437; and see *J. A.*, s. 20.

Wednesday, 14th June, 1882.

**533.** In pursuance of the powers conferred upon them by the Statutes, in that behalf the Council of Judges of the Supreme Court of Judicature for Ontario, recommend that the following Orders regulating the Vacations to be observed in the County Courts, and the hours of attendance of the Officers of the said Courts shall be made by the Lieutenant-Governor in Council, pursuant to the said Acts.

County Court vacations.

1. IT IS ORDERED that in the County Courts there shall be the following vacations:

The long vacation is to commence on the first day of July, and to terminate on the first day of September in each year.

2. The Christmas vacation is to commence on the twenty-fourth day of December in each year, and to terminate on the sixth day of the following January.

3. The days of the commencement and termination of each vacation shall be included in and reckoned part of the vacation.

4. Nothing herein contained shall interfere with the Statutory Sittings of the said Courts during any of such periods.

5. During such vacations, except as aforesaid, the Office of the Clerk of the County Court shall be kept open from ten o'clock in the morning until noon.

No Order has ever been passed by the Lieutenant-Governor in Council, adopting the recommendation of this *Rule*, there being no statutory authority empowering him to approve thereof.

Tuesday, 27th June, 1892.

Office hours of  
Clerks of County  
Courts.

**534.** Every County Court Clerk shall keep his office open for the transaction of business on every day except on holidays, and except as hereinafter provided from the hour of ten in the forenoon, to the hour of three in the afternoon. On and between the first day of July and the first day of September, and on and between the twenty-fourth day of December and the sixth day of January, every such Clerk shall keep his office open for the transaction of business, from ten in the forenoon until noon; and during the Statutory Sittings of the Court, such Clerk shall keep his office open as aforesaid, on and between the said dates until four in the afternoon.

The Statutory Sittings referred to in this *Rule* are those required to be held by *R. S. O. c. 43, s. 10*, and see *Rule S. C. 486*.

U. W. O. LAW

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27th June, 1882.

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C. 486.

Friday, 15th December, 1882.

**535.** IT IS ORDERED, that the offices of the High Court of Justice, and of the Divisions thereof, and of the Court of Appeal, shall be kept open during the Long Vacation, and the Christmas Vacation, from ten of the clock in the forenoon until twelve o'clock noon.

Office hours of  
offices of High  
Court during  
vacation.

This Rule does not apply to the offices of Officers of the Supreme Court, *e. g.*, the Master in Chambers, the Master in Ordinary, the Local Masters, and Taxing Officers.

Tuesday, 2nd January, 1883.

**536.** Whereas, by a resolution passed on the 18th September, 1881, by the Judges of the Supreme Court of Judicature for Ontario, it was resolved that the said Judges were of opinion that it was reasonable that the present Official Guardian *ad litem* of Infants, being allowed to continue his general practice, should be paid a clear yearly salary of \$2,500.

Salary and ex-  
penses allowed  
to Official Guar-  
dian.

And whereas, by an Order made by His Honour the Lieutenant-Governor in Council, bearing date the 15th day of April, A. D., 1882, it was ordered that the Report of the Honourable the Attorney-General, with reference to the office of Official Guardian *ad litem* of Infants of the High Court of Justice, and appointing John Hoskin Esquire, to the said office be acted upon.

And whereas, in the said Report, which bears date the 15th day of April, 1882, it is (amongst other things) stated as follows:

"The money now at the credit of the account of Official Guardian *ad litem* is not sufficient to pay the Guardian's salary and disbursements, but the amount earned since the commencement of the Act is estimated as adequate to pay the said salary and all disbursements. Mr. Hoskin is willing that his disbursements shall be the first charge on the fund from time to time,

at the credit of the said account, and that his salary shall be paid according as there is money to pay the same and applicable thereto. Mr. Hoskin reports the necessary expenses of the office of Official Guardian to be as follows:

His own salary.....	\$2,500 00
Senior Clerk's salary.....	1,600 00
Second " ".....	1,250 00
Copying " ".....	168 00
Message Boys.....	60 00
Shorthand Writer.....	300 00
Rent .....	400 00
Stationery .....	300 00

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Making in all.....\$6,578 00

"The undersigned recommends that these particulars be approved of, if the Judges shall think the same reasonable. \* \* \*

"It is intended that the said several sums shall be reckoned from the time of the commencement of the Act.

"The Official Guardian is to discharge the work at Toronto, and in the Courts, and is not to delegate any of this duty to other Counsel, except in such special cases as the Attorney-General for the time being may direct. The Guardian is also to take motions in Chambers which involve argument by Counsel."

Therefore, in pursuance of the 4th sub-section of section 66 of the Ontario Judicature Act, 1881, the Judges of the Supreme Court of Judicature for Ontario deem it reasonable that there shall be paid to the Official Guardian *ad litem* of Infants a fixed annual salary as such Guardian, to include the payment of all such assistants and clerks as he shall employ, and to include also office rent and stationery, the sum of

U. W. O. LAW

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\$6,578, which shall be over and above his outlay for postage, petty cash, and other disbursements; and the said Judges order that the said salary and disbursements shall be paid quarterly, and shall be computed from the 22nd day of August, 1881.

And whereas by the said Report it was further stated as follows: "The Judges are desirous that certain duties connected with Mortgages and Policies of Insurance taken for infants under the authority of the Court should be assumed by Mr. Hoskin, and a general order for that purpose was passed. This work had not theretofore been the duty of the Guardian *ad litem*, and the undersigned is informed that the Judges are of opinion that the sum of \$200 (two hundred dollars) per annum should be allowed therefor. The undersigned recommends that this allowance should be made in addition to the said sum of six thousand five hundred and seventy-eight dollars, it being understood that all other duties which may hereafter be assigned to Mr. Hoskin under section 66 (b), shall be performed by him without any additional allowance. The disbursements incident to the duties so required by the said general order will be payable out of the money at the credit of the Suitors' Fee Fund Account or otherwise, as the Judges may from time to time direct."

Therefore the said Judges in further pursuance of the said sub-section 4, deem it reasonable that there be paid to the said Guardian, out of the surplus interest fund, for services rendered by him under Rule or Order No. 507, the sum of \$200 annually, commencing from the said 22nd day of August, 1881, and that such payment be made quarterly; and in the event of the fund to the credit of the account of the Official Guardian exceeding the sum requisite to meet the said other charges, it is ordered, that the moneys so paid out of

the said surplus interest fund, be hereafter recouped out of the funds, to the credit of the said account of the said Official Guardian.

Monday, 5th February, 1883.

Office hours of  
offices of the  
Court.

**537.** IT IS ORDERED that except during vacations, and excepting Sundays, Christmas Day, Good Friday, Easter Monday, New Year's Day, the birthday of the Sovereign, and any day appointed by General Proclamation for a General Fast, or Thanksgiving, the offices of the Court shall be kept open from ten a.m. till four p.m. during the sittings of the Divisional Courts, and at other times from ten a.m. till three p.m.

This *Rule*, though not in terms rescinded, is in effect superseded by *Rule, S. C., 545, post*.

Wednesday, 27th June, 1883.

Judges, how to  
be placed  
on rota for trial  
of Ontario elec-  
tion petitions.

**538.** Ordered that the Judges to be placed on the rota for the trial of Election Petitions for Ontario in each year, under the provisions of the Controverted Elections Act for Ontario, shall be selected in manner following, that is to say, the members of the Court of Appeal, and of the Queen's Bench, Chancery, and Common Pleas, Divisions, shall, on or before the twenty-first day of November in every year, select by a majority of votes of the members of such Court, or Division, one of the Judges thereof, for that purpose, and when it appears to the Judges on the rota, after due consideration of the list of Petitions under the said Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional Judge or Judges be appointed to assist the Judges on the rota; in such case, on the requisition of such Judges on the rota, and to the number of the additional Judges required, this Court is from time to time, as may be so required, to select by

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a majority of votes of members of this Court present at a meeting or meetings to be called for that purpose, one or more of the Judges of this Court to try Election Petitions for the residue of the current year ; and any Judge so selected, whether by annual selection or by members of this Court, upon requisition as aforesaid, shall during that year be and be deemed to be on the rota for the trial of Election Petitions.

Monday, 17th December, 1883.

**Rule 539** was rescinded by *Rule S. C. 544, s.s. 18.*

**540.** Ordered that Rule 459 of the Judicature Act be hereby rescinded, and the following substituted :

*Rule 459*  
rescinded.

Unless otherwise specially ordered in the particular case, service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of four o'clock in the afternoon ; except on Saturday, when it shall be effected before the hour of two o'clock in the afternoon. Service effected after four o'clock in the afternoon on any week day except Saturday, shall be deemed to have been effected on the following day. Service effected after two o'clock on Saturday shall be deemed to have been effected on the following Monday.

Time for service  
of pleadings, &c

This Order shall take effect on and after the second day of January next.

Where service is effected after the hours limited by this *Rule*, if the following day be a *dies non*, the service would be deemed to be made on the next juridical day.

Saturday, 15th March, 1884.

**541. (a)** The Master in Ordinary shall have the same power, authority, and jurisdiction, as the Master in Chambers, in respect of all causes and matters referred to him, or which may arise in his office.

Master in Ord-  
inary, jurisdic-  
tion of, extended.



Official Referee  
sitting for Master  
to have like  
powers.

(b) Any Official Referee, upon the request of the Master in Ordinary, or of a Judge of the High Court, may sit with or for the Master; and while sitting for him shall have all the authority and power of such Master, but shall not be entitled to any fees.

It may be doubted whether, under s.s. (a) of this *Rule*, the Master in Ordinary can now exercise the extended jurisdiction subsequently conferred on the Master in Chambers under *Rule S. C. 548, post*.

Practice as to  
appealing from,  
or acting on,  
report of an  
Official Referee.

It will be observed that s.s. (b) of this *Rule* only applies when the Official Referee is sitting "for the Master" it does not apply to cases where a reference is made to an Official Referee direct. Whether, where the Referee is sitting for the Master, his report is to be appealed from, or confirmed, in the same manner as a Master's report, is not by any means clear. In ordinary cases of reference to an Official Referee, according to the English practice, after the Referee has made his report the action may be set down on motion for judgment in pursuance of the report; it is not necessary to move to confirm it, nor does it become confirmed on filing *ipso facto*. Any party dissatisfied with it, may move to set it aside: *Walker v. Bunkell*, 48 L. T. N. S. 618; and when the opposite party is dissatisfied with the report he may, on the motion for judgment, serve notice of a cross motion to vary, or set aside, the report: *Dyke v. Connell*, 11 Q. B. D. 180; 49 L. T. N. S. 174; *Bedborough v. Army and Navy Hotel Co.*, 50 L. T. N. S. 153; but see *Hamilton v. Tweed*, 9 P. R. 448.

Rule 324a  
rescinded and  
re-enacted with  
amendments.

**542.** Ordered that Rule 324a be rescinded and the following substituted therefor: "Upon hearing of such motion the Court may grant the application on such terms and conditions as may be thought proper, or may refuse the same; or instead of either granting or refusing the same, may give such directions for the examination of either parties or witnesses, or for the making of further enquiries, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms as to costs as the Court thinks right."

This *Rule* appears to have been passed, to remove the doubts raised as to the propriety of imposing such terms, as were imposed in *Kinloch v. Morton*, 9 P. R. 38, and *Francis v. Francis*, *Ib.*, 209. See 20 C. L. J. 77.

Rule 543  
rescinded.

**Rule 543** was rescinded by *Rule, S. C.*, 549.

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Saturday, 29th March, 1884.

**544.** It is ordered that the Tariff of Fees made by the Judges of the Supreme Court of Judicature of Ontario on the 10th day of September, 1881, be amended as follows:

Amendment of  
tariff of High  
Court.

1. There may be an appeal by appointment without other notice from the Taxing Officer in Toronto to the Master in Chambers, or to the Master in Ordinary, pending the Taxation, in all cases.

Appeal from  
Taxing Officer to  
Master in Cham-  
bers, or Master  
in Ordinary,  
authorized.

2. Item 12 in the said Tariff is struck out.

Amendments of  
Tariff.

3. Item 23 in the said Tariff is struck out, and the following is substituted therefor:

"23. To amend any pleading when the amendment is proper ..... 2.00."

4. Under the heading "Drawing Pleadings," &c., after item 46 and as applicable to items 36 to 46 inclusive, add "In special or contested actions or matters to be increased to such sum as the Taxing Officer in Toronto may think fit."

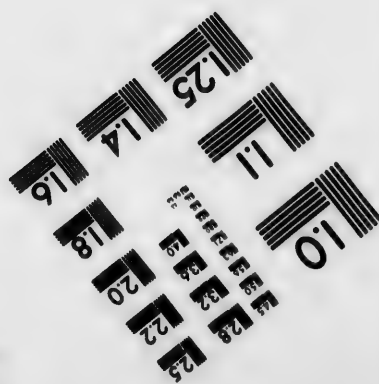
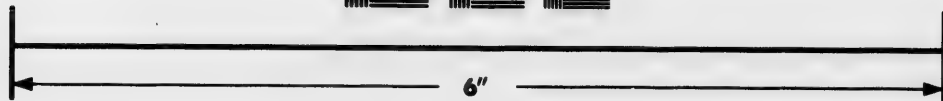
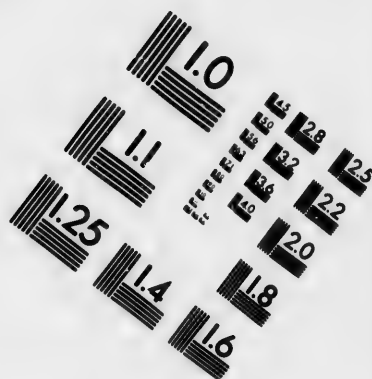
5. Item 83 in the said Tariff is struck out, and the following substituted therefor:

"83. Notice of Motion in Court, or Chambers, engrossing and copy to serve per folio ..... \$0.30."

6. Under the heading "Perusals," item 91 in the said Tariff is struck out, and the following substituted therefor:

"91. Of each of the pleadings as defined by the Act. .... \$1.00"

7. Item 93 in the said Tariff is struck out, and the following substituted therefor:



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WEBSTER, N.Y. 14580  
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Amendments of  
Tariff.

"93. And in special, or contested, actions or matters, or of interrogatories and cross interrogatories on commission, such sum as the Taxing Officer in Toronto thinks fit."

8. Under the heading "Attendances," item 96 in the said Tariff is struck out, and the following substituted therefor :

"96. Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission altogether .. \$1.00."

9. Item 100 in the said Tariff is struck out.

10. Item 111 in the said Tariff is struck out, and the following substituted therefor :

"111. Attendance on warrant, or appointment, of Master, Registrar, Examiner, or Referee, per hour .. \$1.00."

11. Item 115 in the said Tariff is struck out, and the following substituted therefor :

"115. On important points and matters requiring the attendance of counsel, the Master, or Examiner, or Referee, Judgment Clerk, or Inspector of Titles, may certify the amount of counsel fee proper to be allowed (to be noted at the time,) for the guidance of the Taxing Officer in Toronto, who may allow the same in lieu of fees for attendance."

12. Under the heading "Court Fees (Term Fees)," item 120 in the said Tariff is struck out, and the following substituted therefor :

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"120. Fee after statement, or, where statement dispensed with, after filing writ, on defence, joinder of issue, trial or argument before Courts, or any other step in the cause, and on judgments, other than præcipe judgments in mortgage cases. No two fees to be allowed either party, when such proceedings are taken or had between the first day of any sittings of the Courts fixed by Rule 480, and the first day of the following sittings so fixed . . . . . \$1.00."

13. Item 122 in the said Tariff is hereby struck out, and the following substituted therefor :

"122. On every order or judgment, \$1.00."

14. Under the heading "Judgment, Rules or Orders," item 133 in the said Tariff is struck out, and the following substituted therefor :

"133. Drawing minutes of judgment or order per folio, when prepared by Solicitor under directions of Registrar or Judgment Clerk . . . . . \$0.20."

15. Item 135 in the said Tariff is struck out, and the following substituted therefor :

"135. Attending for appointment to settle, or pass judgment, or order, of Court, copy and service . . . . . \$1.30."

16. Under heading "Sales by Master, or Auctioneer," after item 145 add :

"145½. Each necessary attendance on printer . . . . . \$0.50."

17. Under heading "Miscellaneous," after item 153 add :

"In special matters, to be increased in the discretion of the Taxing Officer in Toronto."

Amendments of  
Tariff.

18. Under the heading "Counsel Fees," Items 165 and 166 in the said Tariff are struck out; and Order 539 is rescinded, and the following is substituted therefor:

"165. On argument in Chambers, in cases proper for the attendance of Counsel, (to be increased in the discretion of the Master in Chambers, or the Master in Ordinary) ..... \$2.00."

19. The necessary letters and attendances, incurred in obtaining the decision of the Taxing Officer in Toronto, shall be allowed as part of the costs of the cause.

Monday, the 30th day of June, 1884.

Office hours to  
be observed in  
offices of the  
Court.

**545.** It is ordered that, except during vacations, and excepting Sundays, Christmas Day, Good Friday, Easter Monday, New Year's Day, the birthday of the Sovereign, and any day appointed for the celebration of the birthday of the Sovereign, Dominion Day, and any day appointed by proclamation of the Governor General, or Lieutenant Governor, as a public holiday, or for a General Fast, or Thanksgiving, the offices of the Supreme Court, Court of Appeal, and of the High Court of Justice for Ontario and its Divisions, shall be kept open from ten a. m. to four p. m. during the sittings of the respective Divisional Courts, and at other times from ten a. m. until three p. m.

15th December, 1884.

Writs in the  
Chy. Division to  
be issued by  
officers who issue  
writs in Q. B. &  
C. P. Divisions.

**(545 a.)** For the purpose of equalizing the business in the several Divisions of the High Court:—

From and after the 1st January, 1885, all writs of summons for the commencement of actions shall be issued by the officers who now issue like writs in the

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Queen's Bench, and Common Pleas, Divisions, of the said High Court of Justice, and shall be issued alternately in the Queen's Bench, Chancery, and Common Pleas Divisions, of the said High Court. Writs issued by a Deputy Clerk of the Crown and Pleas, or a Local Registrar, need not be signed or sealed by the Clerk of the Process.

Writs to be  
issued alternately.

This *Rule* has made an important change in the practice as to the issue of writs. Hereafter, in Toronto, writs in all the Divisions are to be issued by the Clerk of the Process; and in the country, by the Local Registrars, and Deputy Clerks of the Crown. The former power of the Clerk of Records and Writs, and Deputy Registrars, to issue writs in the Chancery Division is taken away.

**546.** All proceedings in actions, to final judgment, shall be carried on in that office in the same county where the writ of summons was issued, in which by the memorandum subscribed on the writ, or by the notice of the writ, the appearance is required to be entered, except where, by any rule of Court, it may be otherwise provided, or where the Court, or Judge, shall otherwise direct.

Proceedings to  
final judgment, to  
be carried on in  
office where ap-  
pearance required  
to be entered.

This *Rule* amends an apparent defect in the phraseology of *Rule S. C. 50*, which required the subsequent proceedings to be carried on "in the office from which the writ of summons issued," by directing them to be carried on in future in the office where "appearance is required to be entered, which has been the practice actually pursued under *Rule S. C. 50*.

**547.** The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy of such writ and of all the indorsements thereon. Such copy shall be signed by, or for, the solicitor leaving the same, or by the plaintiff himself if he sues in person. Where the writ is issued in the Chancery Division of the High Court by the Clerk of the Process, such copy shall be forthwith transmitted by him to the Clerk of Records and Writs. Where the writ is issued

Copy of writ to  
be left, when  
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Clerk of Process  
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of writs in Chy  
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Clerk of Records  
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in the said Division by a Deputy Clerk of the Crown and Pleas, such copy shall be forthwith transmitted by him to the Deputy Registrar, in whose office the appearance is required to be entered.

*Rules S. C. 21, 25, 50 rescinded.*

Marginal *Rules* 21, 25, and 50 are hereby repealed.

This *Rule* provides for the delivery of the copies of writs left in actions in the Chancery Divisions to the Clerk of Records and Writs. It would appear that the copies of writs left in actions in the Queen's Bench, and Common Pleas, Divisions, with the Clerk of the Process, are in like manner to be delivered by the Clerk of the Process to the Registrars of those Divisions respectively: see *Rule* of 19th Feb., 1859, *ante* p. 556. This *Rule* makes it compulsory to leave a copy of the writ and indorsement; *Rule S. C. 25* left it optional to leave the copy or not.

*Rule 420 amended—jurisdiction of Master in Chambers extended.*

**548.** Rule 420 is hereby amended by adding thereto the following provisions: "And in addition thereto shall be, and hereby is, empowered and required to do all such things, transact all such business, and exercise all such authority, and jurisdiction, in respect of the same, as by virtue of any statute or custom, or by the rules and practice of the said Courts, or any of them respectively, were, at the time of the passing of the Acts 33 Vict. (O.) c. 11, 37 Vict. (O.) c. 7, the Ontario Judicature Act, 1881, and are now done, transacted or exercised by any Judge of the said Courts sitting at Chambers, save and except in respect to matters excepted by the sub-section (a) of said Rule.

This *Rule* has added very largely to the jurisdiction of the Master in Chambers. It in effect confers upon him whatever jurisdiction was exercised by a Judge in Chambers on the 15th December, 1884, except those matters excepted from his jurisdiction by *Rule S. C. 420*, sub-sec. a.

*Judgments under Rule 80.*

*Setting aside fraudulent conveyances.*

It therefore confers the power to order judgments to be entered under *Rule S. C. 80*, his power to do which was previously doubted: see 20 C. L. J. 159. He has also now power to entertain summary applications to set aside fraudulent conveyances by judgment debtors, under *R. S. O. c. 49, s. 10, et seq.*, which he did not formerly possess: see *Queen v. Smith*, 7 P. R. 429; see however *Watts v. Hobson*, 7

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S. C.—548.

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Watts v. Hobson, 7

P. R. 334. He has also power to make orders dispensing with the wife joining in a conveyance by her husband, under *R. S. O. c. 126, s. 8*, and 44 Vict. c. 14, (O), a jurisdiction he did not formerly possess: *Re Nolan*, 6 P. R. 115; also to grant judgments for partition on summary applications in Chambers under *Chy. Ord. 640*, which was also formerly excluded from his jurisdiction; *Re Arnott*, *Chatterton v. Chatterton*, 8 P. R. 39; unless it can be said that the necessity for directing a reference to another officer, excludes such motions from his jurisdiction.

Dispensing with  
wife executing  
deed.

Application for  
partition.

Prior to Rule S. C. 548 the right of the former Referee in Chambers to direct a reference to a Master was denied: *Brown v. Dollard*, 6 P. R. 113; (this case was affirmed on rehearing, however, on another ground, viz: that the relief should have been sought under *Chy. Ord. 398 et seq.*): see also *Queen v. Smith*, 7 P. R. 429: and quite recently the right of the Master in Chambers to direct such a reference, has also been questioned: *Re Joseph Hall Manufacturing Co.*, 21 C. L. J. 79; but as a Judge in Chambers had, prior to Rule S. C. 548, undoubted power to direct such references, it may be that such power is now vested in the Master in Chambers; on the other hand, it may be argued, that the extended jurisdiction of the Master in Chambers is confined to such things as a Judge in Chambers could completely dispose of by order, without any delegation of power by reference to a Master, or otherwise; and that therefore the power to direct references to other officers, is still excluded from the jurisdiction of the Master in Chambers. It was, however, formerly the practice for the Referee in Chambers, and since *The Judicature Act* it has been the constant practice for the Master in Chambers, to award judgments, in mortgage actions where there are infant defendants: see *Chy. Ord. 534*, ante vol. 1. p. 234, and also to pronounce orders, or judgments, for administration: see *Chy. Ord. 467*, ante vol. 1, p. 277, which judgments, in many cases, direct references to a Master, and it is somewhat difficult to see, if this practice is correct, on what principle the Master in Chambers can, upon motion for judgment in partition actions, under *Chy. Ord. 640*, be denied now to possess similar powers.

References to  
Masters.

This Rule also gave the Master in Chambers power to make orders for the payment of money out of Court in some cases. But by 48 Vict. c. 13, s. 13, (O.) this power was taken away again, and all orders for payment of money out of Court must, under Rule S. C. 424, be made by the Court, or a Judge in Chambers.

Payment of  
money out of  
Court.

The additional jurisdiction conferred upon the Master in Chambers by Rule S. C. 548, except as regards the payment of money out of Court, which, as we have seen, is taken away from the Master in Chambers, is extended by 48 Vict. c. 13, s. 21, (O.) to the County Court Judges, and Local Masters, and also to Official Referees

Additional juri-  
diction confer-  
red on C. C.  
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cal Masters, but  
not on Master in  
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authorized to sit for the Master in Chambers under *Rule S. C. 421* : but not to the Master in Ordinary when acting under *Rule S. C. 541. ante*.

Where there is both a County Court Judge, and a Local Master exercising jurisdiction in Chambers, in any County the jurisdiction of the former is still confined to actions in the Queen's Bench, and Common Pleas, Divisions, and of the latter to actions in the Chancery Division : see *Rule S. C. 422*.

Rule 543  
rescinded.

**549.** Rule 543 is hereby repealed and the following substituted therefor :—

Judges of C. C.  
not to take  
examinations  
directed by their  
own order, or  
appointment,  
where the fees  
therefor are pay-  
able in cash.

References  
under judgments  
in administra-  
tion, partition,  
or mortgage  
actions, excepted.

In actions in the High Court of Justice no reference to arbitration, or other reference, or examination for the purpose of discovery, or examination of a judgment debtor, on which fees may be payable otherwise than in law stamps, shall be taken before the Judge of the County Court, or local Judge of the High Court, or local Master, being also a Judge of the County Court, by whom the order [or appointment] for such reference, or examination, has been made. References in administration matters under General Order 638 of the Court of Chancery, and in partition matters under General Order 648 of the Court of Chancery, and other like references in mortgage actions, are excepted from the operation of this Rule.

This *Rule* is simply an amendment of the *Rule* which it repeals, by the addition of the words in brackets.

W. W. O. LAW

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## TARIFF OF COSTS

IN

## THE HIGH COURT OF JUSTICE.

September 10th, A. D. 1881.

From and after the twenty-second day of August, 1881, the Table of Costs following shall be that according to which all costs in Civil Actions in the High Court of Justice for Ontario shall be allowed and taxed, and no other fees, costs, or charges than therein set down shall be allowed in respect of the matters thereby provided for.

## TABLE OF COSTS.

General allowance for plaintiffs, and defendants, as well as between Solicitor and Client as between Party and Party, approved by the Judges of the Supreme Court of Judicature for Ontario, this tenth day of September, A.D. 1881 (a).

1. Instructions to sue in undefended cases.....	\$3 00
2. In defended cases.....	4 00
3. Instructions to defend.....	4 00

(a) The fees prescribed, cannot be increased either by a Judge, or Taxing Officer, except where power to increase is given by the Tariff: *Re Totten*, 8 P. R. 386.

Though a taxing officer has a discretion in the taxation of costs as between party and party, and the same discretion as between solicitor and client, still it by no means follows that what is reasonable in the former case is also reasonable in the latter: *Re Elphinstone & Fanshawe*, 52 L. J. Chy. 186.

For tariff of disbursements payable in the High Court, see ante p. 553.

## TARIFF OF COSTS IN THE HIGH COURT.

Instructions to defend may be allowed, although action dismissed before statement of defence filed : *Bissett v. Strachan*, 8 P. R. 211. When solicitor acts in person, instructions are not allowed : See *London Scottish Benefit Society v. Chorley*, 12 Q. B. D. 452.

## WRITS.

1. All writs, except subpœnas, and concurrent, and renewed writs ..... \$2 00
4. Concurrent writ ..... 1 50
5. Renewed writ ..... 1 50
6. If over four folios, for every folio ..... 0 20
7. Subpœna *ad testificandum* ..... 1 00
8. Subpœna *duces tecum* ..... 1 25
- If over four folios, additional per folio ..... 0 15
9. Notice of writ for service in lieu of writ out of jurisdiction and copy ..... 1 00
10. (Alias, and subsequent, writs, to be allowed as originals.)
11. Special indorsement of writ of summons ..... 1 00
12. [NOTE.—*Above allowances to include all charges for attending for, and delivery to the officer, and for all notices required to be indorsed on writ, except as above provided for.*]

This item is struck out by Rule S. C. 544, clause 2.

## COPY AND SERVICE OF WRITS OF SUMMONS, AND OTHER PROCESS.

13. For copy, including copy of notices required to be indorsed, each ..... 1 00
- If over four folios, for every additional folio .... 0 10
- Even where a copy is less than four folios, the \$1 is chargeable : *Gage v. Canada Publishing Co.*, 19 C. L. J. 175; 3 C. L. T. 267.
14. Service of each copy of writ, if not done by the Sheriff or an officer employed by him, when taxable to solicitor on Sheriff's default ..... 1 00

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15. If served at a distance of over two miles from the nearest place of business, or office, of the solicitor serving same, for each mile beyond such two miles ..... \$0 13
16. (For service of writ out of jurisdiction, such allowance to be made as the taxing officer shall think fit.)

#### INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.

17. To counsel in special matters ..... \$1 00
18. To counsel in common matters ..... 0 50
19. For special affidavits when allowed by the taxing officer ..... 1 00
20. For pleadings in action ..... 1 50

This is only allowed once in the course of the action : *Torrance v. Torrance*, 9 P. R. 271 ; 2 C. L. T. 311.

21. For counter-claim, when such claim could not heretofore form the subject of a set-off ..... 2 00
- 22 For reply to such counter-claims ..... 2 00
23. [To amend any pleading when the amendment is proper.] ..... 2 00

Amended by *Rule S. C. 544* (3) so as to read as above. The item originally read: "23. To amend any pleading when the amendment is occasioned by a pleading other than a demurrer of the opposite party, \$2.00,"

24. For confession of defence under Rule 157 ..... 2 00
25. For special case in course of action ..... 2 00
26. For special case when no writ issued, or pleadings had, and no instructions to sue allowed ..... 3 00
27. To add parties by order of Court or Judge ..... 2 00
28. For brief ..... 2 00
29. For every suggestion ..... 1 00
30. For adding parties in consequence of marriage, death, assignment, &c. .... 1 00
31. For issue of fact, by consent, or Judge's order .. 2 00
32. To defend added parties after suggestion of death of original party, or on revivor ..... 2 00

33. For confession of action in ejectment as to the whole, or in part..... \$1 00
34. To strike or reduce special jury ..... 2 00
35. For such other important step or proceeding in the suit as the taxing officer is satisfied warrants such a charge..... 2 00

This fee is chargeable for instructions for appeal :  
*Barber v. Morton*, 2 C. L. T. 340.

## DRAWING PLEADINGS, &amp;c.

36. Statement of claim ..... \$2 00
37. If above ten folios, for every folio above ten, in addition ..... 0 20
38. Statement of defence, if five folios or under .... 2 00
39. If above five folios, for every folio in addition .. 0 20
40. Statement of defence and counter-claim, up to fifteen folios ..... 3 00
41. For every folio over fifteen..... 0 20
42. Reply and other pleadings for or on behalf of plaintiff or defendant ..... 2 00
43. If above ten folios, for every folio in addition .. 0 20
44. Demurrer ..... 2 00
45. Petition, per folio..... 0 20
46. Issue for trial of facts by agreement or order, for every folio ..... 0 20

[In special or contested actions or matters to be increased to such sum as the Taxing Officer in Toronto may think fit.]

This clause is added by *Rule S. C. 544* (4), and is applicable to items 36—46 inclusive.

47. Special case, per folio ..... 0 20
48. Drawing interrogatories, or answers, for any purposes required by law, including engrossing, per folio ..... 0 20
49. (The above charges include engrossing, but not copies to file or serve.)
50. Taking cognovit and entering judgment thereon, when there has been no previous proceeding, and the true debt does not exceed \$200 .... 8 00

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## TARIFF OF COSTS IN THE HIGH COURT.

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51. For same services when the true debt exceeds \$200 .....\$12 00
52. Drawing and engrossing cognovit, and attending execution, when there have been previous proceedings ..... 2 00

## COPIES.

53. Of pleadings, brief, and other documents, when no other provision is made, and copies properly allowable ..... 0 10
54. Certified copy of pleadings, or issue, for use of Judge ..... 1 50
55. For every folio above 15, per folio..... 0 10
56. Of special and common orders of Court..... 0 75
57. Of special order of Court above three folios, per folio ..... 0 20
58. Of summons, or order, of a Judge ..... 0 50

## NOTICES, INCLUDING COPY.

59. Of appearance, when duly entered and notice given on the day of appearance, but not otherwise ..... 0 50
60. To sheriff, to discharge prisoner out of custody.. 0 50
61. Notice, in action for recovery of land, to defend for part of premises ; not to be allowed when defence limited by appearance ..... 1 00
62. If above three folios, per folio in addition ..... 0 20
63. Notice of claimant's or defendant's title in action for recovery of land, same fees.
64. Notice of entry of appearance in action for recovery of land by a party not named in writ .. 0 50
65. Notice of admission of right and denial of ouster by a joint tenant..... 0 50
66. If above three folios, for every folio additional.. 0 20
67. Of discontinuance and one copy..... 0 50
68. For every additional copy, per folio ..... 0 10
69. Of disputing amount of claim..... 0 50
70. Of confession of action in action for recovery of land, as to whole or part..... 0 50



71. Notice in lieu of statement of claim, and one copy .....	\$0 50
72. For every additional copy, per folio .....	0 10
73. Of trial or assessment and one copy .....	0 50
74. For every additional copy, per folio .....	0 10
75. Demand of residence of plaintiff .....	0 50
76. Demand of names of partners .....	0 50
77. All common notices not above specified .....	0 50
78. Notice to admit, and produce, if not exceeding two folios, and one copy .....	0 50
79. For every additional copy, per folio .....	0 10
80. For each necessary folio above two .....	0 20
81. Notice of setting down on motion for judgment, or on further directions and one copy .....	0 50
82. For every additional copy, per folio .....	0 10
83. [Notice of motion in Court, or Chambers, engrossing and copy to serve, per folio] .....	0 30
This item, originally .20, was changed to .30 by Rule S. C. 544, (5.)	
84. For every additional copy, per folio .....	0 10
85. Notice of taxation, or appointment to tax, and one copy .....	0 50
86. For every additional copy, per folio .....	0 10
87. For preparing, and filling up for service, in any cause or matter, each notice to creditors to prove claims, and each notice that cheque may be received, specifying the amounts to be received for principal and interest, and costs, if any—including mailing .....	0 25
88. Notice of filing affidavits, when required, and one copy (only one notice to be allowed for a set of affidavits filed, or which ought to be filed, together) .....	0 50
89. For every additional copy, per folio .....	0 10
90. Notice by defendant to third party, under Rule 108 .....	1 00

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## PERUSALS.

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91. [Of each of the pleadings as defined by the Act..\$1 00

Amended so as to read as above, by *Rule S.C. 544*

(6) The item originally read as follows :—

“91. Of statement of claim or statement of defence, including counter claim, if any, if statement or defence special and raise difficult questions for consideration..... \$1.00

92. Of special case by the solicitor of any party, except the one by whom it is prepared, when case is submitted in the course of the cause.. 2 00

93. [And in special, or contested actions, or matters, or of interrogatories, and cross-interrogatories on commission, such sum as the Taxing Officer in Toronto thinks fit.)

Amended by *Rule S.C. 544* (7) so as to read as above. The item originally read as follows :—

“93. Of interrogatories and cross-interrogatories on commission.....\$1.00.”

See note to item 172.

94. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where they exceed 20 folios, so far as their perusal is necessary, per folio, over 20 folios. 0 50
95. Not in any case to exceed the sum of \$5.

## ATTENDANCES.

96. [Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission altogether.] 1 00

Amended by *Rule S.C. 544* (8) so as to read as above. The item originally read as follows :—

“96. Necessary attendances consequent on the service of a notice to produce or admit, including making admission altogether.....1.00.”

- 97 To be increased by Taxing Officer in case of special, difficult and important nature to \$2.

98. For summons in Chambers, including drawing and obtaining same..... \$1 00
99. Attending on return of summons, or notice of motion, in Chambers, to be increased in the discretion of the presiding officer to \$2..... 1 00
100. (*Such increase to be marked at the time the order is made.*)  
       This item was struck out by *Rule S. C. 544 (9.)*
101. On consultation, or conference, with counsel, in special, difficult, and important matters, in the discretion of the Taxing Officer in Toronto .. 2 00  
       See note to item 172.
102. (And to be increased in his discretion as between solicitor and client, to such sum as he shall see fit.)
103. Solicitor attending Court on trial of cause, when not himself counsel, or partner of counsel .. 2 00
104. And in special, difficult, and important cases, each hour necessarily present at trial (in no case to exceed \$10 per day) ..... 2 00  
       (Provided the attendance of such solicitor, and the length of time of such attendance, be duly entered at the time in the book of the Registrar, Deputy-Registrar, Deputy-Clerk of the Crown, Clerk of Assize, or other officer of the Court present at the time.)
105. To hear judgment when not given on close of argument ..... 2 00  
       This fee is taxable when the solicitor attends to read a written judgment which is handed out to the Registrar, and not delivered in open Court: *Gage v. Canada Publishing Co.*, 19 C. L. J. 175; 3 C. L. T. 267.
106. To hear judgment when cause on list for judgment, but judgment not given ..... 2 00
107. On taxation of costs, per hour ..... 1 00
108. On revision, per hour, when attendance required by Taxing Officer, or revision had on notice or order ..... 1 00

J. W. O. LAW

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109. To obtain, or give, undertaking to appear, when  
service accepted by a solicitor ..... \$1 00  
110. Attendance to file, or serve ..... 0 50  
111. Attendance on warrant, or appointment, of Mas-  
ter, Registrar, [*Special*] Examiner, or Referee,  
per hour ..... 1 00

This item was amended by *Rule S.C. 544* (10), by  
striking out the word "*Special*."

112. To be increased in the discretion of the Taxing  
Officer in Toronto, to not exceed per hour .. 2 00

See note to item 172.

113. Attendance on Master, or Registrar, in special  
matters, per hour ..... 1 00  
114. Every other necessary attendance ..... 0 50

115. [On important points, and matters, requiring the  
attendance of counsel the Master, or Examiner,  
or Referee, Judgment Clerk, or Inspector of  
Titles, may certify the amount of counsel fee  
proper to be allowed (to be noted at the time,) for the  
guidance of the Taxing Officer in Toronto, who may allow the same in lieu of  
fees for attendance.]

Amended by *Rule S. C. 544* (11), so as to read as  
above. The item originally read as follows:—"115  
Provided that on special and important points, and  
matters requiring the attendance of counsel, before  
the Master, Special Examiner, or Referee, Judgment  
Clerk, or Inspector of Titles, the Taxing Officer in  
Toronto may, in lieu of the fees for attendance, allow  
a counsel fee when counsel attend the same, and such  
attendance is noted at the time."

See note to item 172.

## BRIEFS.

116. For drawing brief, not exceeding five folios.... 2 00  
117. For drawing brief, per folio, for original and  
necessary matter ..... 0 20  
118. Copy of documents, other than pleadings, per  
folio ..... 0 10  
119. Copy of brief for second counsel, when fee taxed  
to him, per folio ..... 0 10

## COURT FEES (TERM FEES).

120. Fees after statement, or, where statement dispensed with, after filing writ, on defence, joinder of issue, trial, or argument before Courts [or any other step in the cause], and on judgments, other than *præcipe* judgments in mortgage cases. No two fees to be allowed either party when such proceedings are taken, or had, between the first day of any sittings of the Courts fixed by Rule 480, and the first day of the following sittings so fixed ..... \$1 00

Amended by *Rule S. C. 544* (12), by the insertion of the words in brackets.

121. Fee on certified copy of pleadings for Judge .. 1 00  
122. [On every order, or judgment]..... 1 00

Amended so as to read as above by *Rule S.C. 544* (13). The item originally read as follows : " 122. On every order of Court, and Judge's order, or order of Master in Chambers..... \$1.00."

This fee is taxable on a *præcipe* order; *Gage v. Canada Printing Co.*, 19 C. L. J. 175; 3 C. L. T. 267.

123. Fee on *præcipe* judgment in mortgage cases .. 4 00

## AFFIDAVITS.

124. Drawing affidavits, per folio..... 0 20  
125. Engrossing same to have sworn, per folio..... 0 10  
126. Copies of affidavits, per folio, when necessary.. 0 10  
127. Common affidavits of service, including service by post when necessary, or of payment of mileage and of non-appearance, including copy, oath, and attendance to swear ..... 1 00  
128. The solicitor for preparing each exhibit in town or country ..... 0 10  
129. Commissioner for each oath ..... 0 20  
130. Commissioner for marking each exhibit ..... 0 10

W. W. O. LAW

# TARIFF OF COSTS IN THE HIGH COURT.

825

## DEFENDANTS.

131. Appearance, including attending to enter .... \$1 00
132. For limiting defence in action for recovery of land in appearance, besides above allowance for appearance ; not to be allowed when notice of limiting defence served ..... 1 00

## JUDGMENT, RULES, OR ORDERS.

133. Drawing [*Special*] minutes of judgment, or order, per folio, when prepared by solicitor, under directions of Registrar, or Judgment Clerk ... 0 20

Amended by *Rule S.C. 544* (14) by striking out the word "special."

134. Judgment for non-appearance on specially indorsed writs, and in action for recovery of land ..... 1 00
135. Attending for appointment to settle or pass judgment, or order, of Court, copy and service. 1 30

This item, originally .80, was increased to \$1.30 by *Rule S. C. 544* (15).

136. When served on more than one party, the extra copies and services are to be allowed.
137. For every hour's attendance before proper officer on settling minutes, or passing ..... 1 00
138. (To be increased in the discretion of the officer in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether) ..... 5 00

## LETTERS.

139. Letter to each defendant before suit, only one letter to be allowed to any defendants who are in partnership, and when subject of suit relates to the transactions of their partnership 0 50
140. Common letters, including necessary agency letters ..... 0 50

## TARIFF OF COSTS IN THE HIGH COURT.

Necessary letters between a solicitor and his agent on the business of the cause, are taxable as between party and party, no matter where the agent resides : *Agnew v. Plunkett*, 9 P. R. 456.

141. With power to the taxing officer as between solicitor and client, to increase the fee for special and important letters, to an amount not exceeding..... \$2 00
142. Postages—the amount actually disbursed.

Necessary letters, and attendances incurred in obtaining the decision of the Taxing Officer in Toronto, respecting matters upon which his decision is required, are taxable under *Rule S. C.* 544 (19).

## SALES BY MASTER, OR AUCTIONEER.

143. Drawing advertisements for the sale of real, or personal estate, under the direction of the Court, including all copies except for printing 2 00
144. And for each folio over five. per folio ..... 0 20  
(To be increased in the discretion of the Master to a sum not exceeding ten dollars, when special information has been procured for the purpose of sale.)
145. Copies for printing, per folio ..... 0 10
- 145½. Each necessary attendance on printer..... 0 50
- This item was added by *Rule S. C.* 544 (16).
146. Attending and making arrangements with auctioneer..... 1 00
147. Revising proof ..... 1 00
148. Fee on conducting sale when held where solicitor resides ..... 5 00
149. If solicitor is engaged for more than three hours, for every hour beyond that time ..... 1 00
150. Fee on conducting sale elsewhere, besides all necessary travelling and hotel expenses, when solicitor attends with the approval of the Master previously given..... 10 00

U. W. O. LAW

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## TARIFF OF COSTS IN THE HIGH COURT.

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151. If the sale occupies more than one day, the Master may allow him, in addition to his travelling expenses, *per diem*, a sum not exceeding twenty dollars.
152. (The Master may also allow to one other party to the suit his fees and expenses for attending sales, if, in his opinion, it is necessary and proper that he should attend.)

## MISCELLANEOUS.

153. Statement of issues in Master's office, when required by the Master ..... \$2 00  
[In special matters to be increased in the discretion of the Taxing Officer in Toronto.]

This clause was added by *Rule S.C. 544* (17).  
See note to item 172.

154. For each folio over 10 ..... 0 20
155. (When it has been satisfactorily proved that proceedings have been taken by solicitors out of Court to expedite proceedings, save costs, or compromise actions, an allowance is to be made therefor in the discretion of the Taxing Officers in Toronto.)

See *Torrance v. Torrance*, 9 P. R. 271. See also  
*Rule S.C. 442*.

See note to item 172.

156. Drawing bill of costs as between party and party for taxation, including engrossing and copy for Taxing Officer, per folio ..... 0 20
157. Copy, per folio, to serve ..... 0 10

## COUNSEL FEES.

158. Fee on motion of course, or on motion for order *nisi*, or on motion to make order absolute in matters not special ..... 2 00
159. On special motion for order *nisi*, and on special application to the Court, only one counsel fee to be taxed ..... 5 00



## TARIFF OF COSTS IN THE HIGH COURT.

(To be increased to \$10 in the discretion of the Taxing Officer in Toronto, who shall mark amount to be taxed on order of Court, if any, before taxation.)

See note to item 172.

160. Fee on argument on supporting or opposing application to the Court, orders *nisi*, or argument of demurrer, special case, or appeal .....\$10 00
161. To be increased in the discretion of the Taxing Officer in Toronto.

See note to item 172.

162. Fee with brief on assessment ..... 10 00
163. Fee, with brief, at trial..... 10 00
164. To be increased by taxing officer in his discretion to a sum not exceeding \$20 to senior counsel, and \$10 to junior counsel, in actions of a special and important nature, provided that the Taxing Officer in Toronto shall have power to tax increased fees, but more than one counsel fee shall not be allowed in any case not of a special and important nature, not more than two in any case.

See note to item 101.

The discretion exercised by the Taxing Officer will not usually be interfered with on appeal: *Fox v. Toronto and Nipissing Ry.*, 7 P. R. 157.

Where a second argument was rendered necessary, by reason of the resignation of a Judge, the successful party was allowed the costs of both arguments: *Platt v. Attrill*, 19 C. L. J. 348; 3 C. L. T. 543.

165. [On argument in Chambers in cases proper for the attendance of Counsel, (to be increased in the discretion of the Master in Chambers, or the Master in Ordinary.)..... 2 00

Amended by *Rule S.C. 544* (18) so as to read as above. The item originally read as follows:—

“165. Fee to counsel, when counsel attend on argument or examination in Chambers, where in the opinion of the Master, or Judge in Chambers, the attendance of counsel is required ..... \$2.00.”

U. W. O. LAW

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## TARIFF OF COSTS IN THE HIGH COURT.

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166. *But may be increased in the discretion of the Master, or Judge in Chambers, to a sum not exceeding \$10.*

This item was struck out by *Rule S.C.*, 544 (18), item 165 being substituted.

167. To attend reference to Master, or Referee, when counsel necessary ..... \$5 00

168. To be increased in special and important matters requiring the attendance of counsel, in the discretion of the Taxing Officer in Toronto.

See note to item 172.

169. Fee on drawing, and settling, allegations in præcipe for revivor, in special cases, proper for opinion of counsel ..... 2 00

170. To be increased in discretion of Taxing Officer in Toronto to an amount not exceeding \$5.

See note to item 172.

171. On settling pleadings, interrogatories, special cases, or petitions, and advising on evidence in contested cases, in the discretion of the Taxing Officer in Toronto, not exceeding ..... 5 00

See note to item 172.

172. When any fee is subject to be increased, in the discretion of the Taxing Officer in Toronto, either party to the taxation may, during its progress, require that such item shall be referred by the Local Taxing Officer to the Taxing Officer in Toronto, whose decision shall be final as to that item, but this shall not prevent an appeal from, or revision of, such taxation.

Necessary letters and attendances to obtain the opinion of the Taxing Officer at Toronto, are also taxable under *Rule S.C.* 544 (19).

173. The Taxing Officer in Toronto may apply to a Judge, or the Courts, on the taxation of any item which is in his discretion, or is referred to him.

174. No application shall be allowed by either solicitor, or counsel, to a Judge, or the Court, in reference to any item which is in the discretion of the Taxing Officers in Toronto, but this is not to prevent an application for revision of taxation.

## CRIER.

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| 175. Calling every case, with or without jury..... | 0 60 |
| 176. Swearing each witness, or constable.....      | 0 15 |

## ALLOWANCE TO WITNESS.

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| 177. To witnesses residing within three miles of the court house, per diem .....   | 1 00 |
| 178. To witnesses residing over three miles from the court house....   | 1 25 |
| 179. Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem ..... | 4 00 |
| 180. Engineers, surveyors and architects, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per diem .....      | 4 00 |
| 181. If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each cause only.  |      |
| 182. The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.   |      |
| 183. NOTE.—In taxing costs between solicitor and client, the Master may allow for services rendered not provided for by this tariff, a reasonable compensation, as far as practicable analogous to its provisions.                         |      |

J. G. SPRAGGE,

*President of the Supreme Court of Judicature for Ontario.*

U. W. O. LAW

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# TARIFF OF COSTS

## IN

### THE COUNTY COURTS.

A Tariff of Costs to be allowed to Solicitors and Counsel in the County Courts, as well between Solicitor and Client, as between Party and Party, framed by "The Board of County Judges," acting under and in pursuance of "The Administration of Justice Act, 1884," section 11, and certified by the said Board, as provided by section 11 of the said Act, was considered, and the same was adopted as amended, to take effect on and after the 1st day of January, 1885 (a).

The said Tariff, as amended and adopted, is as follows :

#### TABLE OF COSTS.

1. Instructions to sue in undefended cases..... \$2 00
2. In defended cases..... 3 00
3. Instructions to defend..... 3 00

#### WRITS.

4. All Writs except Subpœnas and concurrent and renewed Writs ..... 1 00
5. Concurrent Writ ..... 0 75
6. Renewed Writ..... 0 75  
If over four folios, for every additional folio. 0 20
7. Subpœna *ad testificandum* ..... 0 50
8. Subpœna *duces tecum* ..... 0 75  
If over four folios, additional per folio ..... 0 15
9. Notice of Writ for service in lieu of Writ out of jurisdiction and copy ..... 0 75

(a) The Tariff previously in force in the County Courts, is to be found *ante* p. 603.

## TARIFF OF COSTS IN COUNTY COURTS.

(Alias and subsequent writs to be allowed as originals).

10. Special endorsement of Writ of Summons..... \$0 75

COPY AND SERVICE, OF WRIT OF SUMMONS, AND  
OTHER PROCESS.

11. For copy, including copy of notices required to be  
endorsed, each..... 0 75  
If over four folios, for every additional folio..... 0 10
12. Service of each copy of writ, if not done by the  
Sheriff or an officer employed by him, when  
taxable to Solicitor on Sheriff's default..... 0 50
13. If served at a distance of over two miles from the  
nearest place of business, or office of the solicitor  
serving the same, for each mile beyond  
such two miles..... 0 10  
(For service of Writ out of jurisdiction, such allowance to be made as the Judge shall think fit).

INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.

14. To Counsel in special matters..... 0 50
15. To Counsel in common matters ..... 0 25
16. For special affidavits when allowed by the Clerk. 0 50
17. For pleading in actions ..... 1 00
18. For counter claim, when such claim could not  
heretofore form the subject of a set-off ..... 1 00
19. For reply to such counter claim..... 1 00
20. To amend any pleading when the amendment is  
proper ..... 1 00
21. For confession of defence under Rule 157..... 1 00
22. For special case in course of action..... 1 00
23. For special case when no writ issued or pleadings  
had, and no instructions to sue allowed ..... 2 00
24. To add parties by order of Court or Judge..... 1 00
25. For Brief ..... 1 00
26. For every suggestion ..... 1 00
27. For adding parties in consequence of marriage,  
death, assignment, &c. .... 0 50

U. W. O. LAW

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## TARIFF OF COSTS IN COUNTY COURTS.

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28. For issue of fact by consent or Judges' order..... \$1 00

29. To defend added parties, after suggestion of death  
of original party, or on revivor ..... 1 0030. For confession of action in ejectment as to the  
whole, or in part (under R. S. O. ch. 43,  
secs. 20-23)..... 0 50

31. To strike or reduce special jury ..... 1 00

32. For such other important step or proceeding in  
the suit as the Clerk is satisfied warrants such  
a charge ..... 1 00

## DRAWING PLEADINGS, &amp;c.

33. Statement of Claim ..... 1 00

34. If above ten folios, for every folio above ten in  
addition ..... 0 15

35. Statement of Defence, if five folios or under..... 1 00

36. If above five folios, for every folio in addition ... 0 20

37. Statement of Defence and counter claim up to  
fifteen folios..... 1 50

38. For every folio over fifteen..... 0 15

39. Reply, and other pleadings, for, or on behalf of,  
plaintiff, or defendant..... 1 00

40. If above ten folios, for every folio in addition ... 0 15

41. Demurrer..... 1 00

42. Petition, per folio..... 0 15

43. Issue for trial of facts by agreement or order, for  
every folio ..... 0 20

44. Special case, per folio ..... 0 20

45. Drawing interrogatories, or answers, for any pur-  
pose required by law, including engrossing,  
per folio ..... 0 20(The above charges include engrossing, but not  
copies to file or serve).46. Taking cognovit and entering judgment thereon  
when there has been no previous proceeding,  
and the true debt does not exceed \$200 ..... 8 0047. For the same services when the true debt ex-  
ceeds \$200 ..... 10 00

48. Drawing and engrossing cognovit, and attending execution when there have been previous proceedings ..... \$1 00

## COPIES.

49. Of pleadings, brief, and other documents, when no other provision is made, and copies properly allowable (per folio) ..... 0 10  
 50. Certified copy of pleadings or issue for use of Judge ..... 0 75  
 51. For every folio above fifteen, per folio ..... 0 10  
 52. Of special and common orders of Court..... 0 50  
 53. Of special order of Court above three folios, per folio ..... 0 10  
 54. Of summons or order of a Judge..... 0 25

## NOTICES, INCLUDING ONE COPY.

55. Of appearance, when duly entered and notice given on the day of appearance, but not otherwise ..... 0 25  
 56. To Sheriff to discharge prisoner out of custody .. 0 50  
 57. Notice, in action for recovery of land, to defend for part of premises, not to be allowed when defence limited by appearance, see item 30 ... 0 50  
 58. If above three folios, per folio in addition ..... 0 15  
 59. Notice of claimant's or defendant's title in like action for recovery of land, same fees.....  
 60. Notice of entry of appearance in like action for recovery of land by a party not named in the writ ..... 0 25  
 61. Demand of particulars..... 0 50  
 62. Particulars of claim, demand, or set off, or counter claim ..... 0 75  
     If exceeding five folios, per folio..... 0 15  
 63. Notice of discontinuance and one copy ..... 0 40  
 64. For every additional copy per folio..... 0 10  
 65. Of disputing amount of claim..... 0 40  
 66. Of confession of action, in action for recovery of land as to whole or part under R. S. O. ch. 43, secs. 20 to 23 ..... 0 40

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## TARIFF OF COSTS IN COUNTY COURTS.

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67. Notice in lieu of statement of claim and one copy	\$0 25
68. For every additional copy per folio.....	0 10
69. Of trial or assessment and one copy .....	0 25
70. For every additional copy, per folio .....	0 10
71. Demand of residence of plaintiff.....	0 25
72. Demand of names of partners.....	0 25
73. All common and necessary notices not above specified .....	0 25
74. Notice to admit or to produce, if not exceeding two folios, and one copy.....	0 25
75. For every additional copy, per folio .....	0 10
76. For each necessary folio above two.....	0 20
77. Notice of motion in Court or Chambers, engross- ing and copy to serve, per folio.....	0 15
78. For every additional copy, per folio .....	0 10
79. Notice of taxation, or appointment to tax, and one copy .....	0 25
80. For every additional copy, per folio .....	0 10
81. Notice of filing affidavits, when required, and one copy (only one notice to be allowed for a set of affidavits filed, or which ought to be filed together) .....	0 25
82. For every additional copy, per folio .....	C 10
83. Notice by defendant to third party, under Rule 108	0 50

## PERUSALS.

84. Of each of the pleadings as defined by the Judi- cature Act .....	0 50
85. Of special case by the solicitor of any party ex- cept the one by whom it is prepared, when case is submitted in the course of the cause ...	1 00
86. Of interrogatories, and cross interrogatories, on commission .....	0 50
87. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application (where perusal necessary) .....	0 50



## ATTENDANCES.

88. Necessary attendances consequent on the service of a notice to produce, or admit, including making admission, altogether..... \$0 50
89. To be increased by Clerk in cases of a special, difficult and important nature to ..... 1 00
90. For summons in Chambers where necessary, including drawing and obtaining same..... 0 50
91. Attending on return of summons, or notice of motion, in Chambers, to be increased in the discretion of the Judge at the time to \$1.50 .. 0 50
92. On consultation or conference with Counsel, in special, difficult, and important matters, in the discretion of the Clerk ..... 1 00
93. (And to be increased in the discretion of the Judge, as between solicitor and client, to a sum not exceeding)..... 3 00
94. Solicitor attending Court on trial of cause, when not himself Counsel, or partner of Counsel.... 1 00
95. And in special, difficult and important cases, each hour necessarily present at trial, in no case to exceed \$5 per day ..... 1 00
- Provided the attendance of such Solicitor, and the length of time of such attendance, be duly entered at the time in the book of the Clerk.
96. To hear judgment, when not given on close of argument..... 1 00
97. To hear judgment, when cause on list for judgment, but judgment not given ..... 1 00
98. On taxation of costs ..... 1 00
99. On revision by Judge, on appeal ..... 0 50
100. To obtain, or give undertaking to appear, when service accepted by a Solicitor ..... 0 50
101. Attendance to file or serve ..... 0 25
102. Attendance on appointment of Clerk, Examiner, or Referee, per hour ..... 0 50
103. Attendance on Clerk in special matters, per hour 0 50

W. W. O. J. W. J.

# TARIFF OF COSTS IN COUNTY COURTS.

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104. Every other necessary attendance..... \$0 25
105. Provided that, in special and important points and matters before the Examiner, Referee, or Clerk, the Judge may in lieu of fees for attendance, allow a Counsel fee not exceeding ..... 5 00

## BRIEFS.

106. For drawing brief not exceeding ten folios ..... 1 00
107. For additional original and necessary matter in brief, per folio..... 0 20
108. Copy of necessary documents, other than pleadings, per folio ..... 0 10

## COURT FEES, (TERM FEES).

109. Fee after statement, or when statement dispensed with, after filing writ, on defence, joinder of issue, trial, on argument before Courts, or any other step in the cause, and on judgments. No two fees to be allowed either party when such proceedings are taken, or had, between the first day of any sittings of the Courts and the first day of the following sittings ..... 0 50
110. Fee on certified copy of pleadings for Judge ... 0 50
111. On every order or judgment..... 0 50

## AFFIDAVITS.

112. Drawing affidavits, per folio ..... 0 20
113. Engrossing same to have sworn, per folio..... 0 10
114. Copies of affidavits when necessary, per folio ... 0 10
115. Common affidavits of service, including service by post when necessary, or of payment of mileage and of non-appearance, including copy, oath and attending to swear ..... 0 75
116. The Solicitor for preparing each exhibit ..... 0 10
117. Commissioner for each oath ..... 0 20
118. Commissioner for marking each exhibit ..... 0 10

## DEFENDANTS.

119. Appearance, including attending to enter ..... 0 50
120. For each additional defendant ... 0 10

## JUDGMENTS, RULES, OR ORDERS.

121. Drawing minutes of Judgment, or order, per folio, when prepared by Solicitor under direction of the Judge ..... \$0 15
122. Judgment for non-appearance on specially endorsed writs, and in action for recovery of land : see item 30 ..... ..
123. For every hour's attendance before proper officer on settling minutes..... .. 0 50
124. To be increased in the discretion of the officer, in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether ..... 2 50

## LETTERS.

125. Letter to each defendant before suit, only one letter to be allowed to any defendants who are in partnership, and when subject of suit relates to the transactions of their partnership..... 0 25
126. Common letters (including necessary agency letters)..... .. 0 25
127. With power to the Clerk, as between Solicitor and Client, to increase the fee for special and important letters to an amount not exceeding 1 00
128. Postage, the amount actually disbursed.

## SALES BY REAL REPRESENTATIVES, OR AUCTIONEERS, IN PARTITION SUITS.

129. Drawing advertisements for the sale of real estate, including all copies except for printing 1 00
130. And for each folio over five (per folio)..... 0 15
131. Copies for printing, per folio..... 0 10
132. Attending and making arrangements with Auctioneer ..... 0 50
133. Revising proof ..... 0 50
134. Fee on conducting sale when held where Solicitor resides ..... 3 00
135. If Solicitor is engaged more than three hours, for every hour beyond that time ..... 0 75

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## TARIFF OF COSTS IN COUNTY COURTS.

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136. Fee on conducting sale elsewhere, besides all necessary travelling and hotel expenses, when Solicitor attends with the approval of the Real Representative previously given..... \$5 00

## MISCELLANEOUS.

(When it has been satisfactorily proved that proceedings have been taken by Solicitors out of Court to expedite proceedings, save costs, or compromise actions, an allowance is to be made therefor in the discretion of the Judge.)

137. Drawing bill of costs as between party and party for taxation, including engrossing and copy for Clerk, per folio ..... 0 15  
 138. Copy per folio, to serve..... 0 10

## COUNSEL FEES.

139. Fee on motion of course, or on motion for order *nisi*, or on motion to make order absolute, in matters not special ..... 1 00  
 140. On special motion for order *nisi*, and on special application to the Court (only one Counsel fee to be taxed)..... 3 00  
 (To be increased to \$5.00 in the discretion of the Judge.)

141. Fee on argument, on supporting, or opposing, application to the Court, orders *nisi*, or argument of demurrer, or special case ..... 5 00  
 142. To be increased in the discretion of the Judge to 10 00  
 143. Fee with brief on assessment ..... 6 00  
 144. Fee with brief at trial ..... 10 00

(To be increased by the Judge in his discretion in actions of a special and important nature, and on notice to the opposite party, to a sum not exceeding \$25.00; no charge to be made by either party in connection with such application.)

145. Fee to Counsel when Counsel attend on argument on examination in Chambers, where, in the opinion of the Judge, the attendance of Counsel is required..... \$1 00
146. But may be increased, in the discretion of the Judge, to a sum not exceeding ..... 5 00
147. To attend reference to Clerk, or Referee, when counsel necessary ..... 3 00
148. To be increased in special and important matters requiring the attendance of counsel in the discretion of the Judge, to a sum not exceeding 6 00
149. Fee on drawing and settling, allegations in præcipe for revivor in special cases proper for opinion of counsel ..... 1 00
150. To be increased in discretion of Clerk to an amount not exceeding..... 2 00
151. On settling pleadings, interrogatories, special cases, or petitions, or advising on evidence in contested cases, in the discretion of the Clerk, not exceeding ..... 3 00
152. On arbitrations, counsel fee may be allowed and taxed on same scale and conditions, so far as possible, as those hereinbefore prescribed for counsel fees, at trials.

*Note.*—In taxing costs between Solicitor and Client, the Master may allow for services rendered, not provided for by this tariff, a reasonable compensation as far as practicable, analogous to its provisions.

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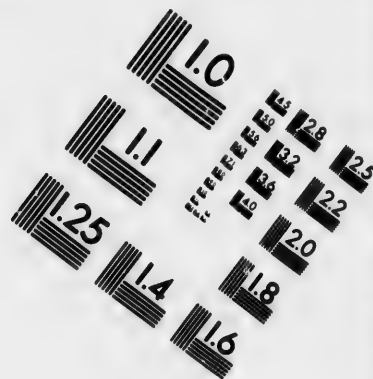
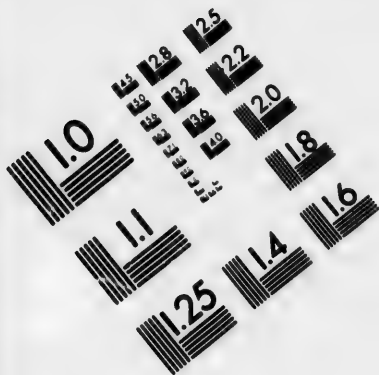


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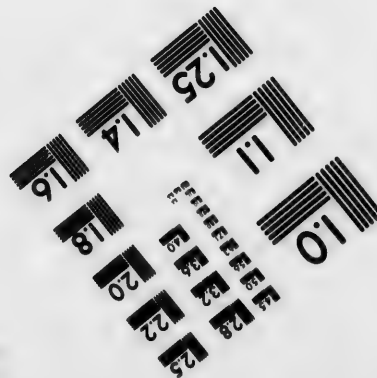
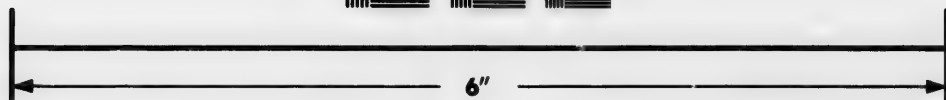
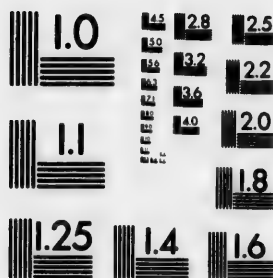
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